

**CHAPTER 12 PLANS, SPECIFICATIONS & ESTIMATE****CONTENTS**

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## CHAPTER 12 PLANS, SPECIFICATIONS, & ESTIMATE

### 12.1 INTRODUCTION

For locally sponsored projects on the State Highway System (SHS), the local agency must enter into a cooperative agreement with Caltrans to establish the responsibility for project PS&E (see Caltrans *Cooperative Agreement Manual*).

The preparation of the plans, specifications, and estimate (PS&E) for local federal-aid projects off the SHS is the responsibility of the local agency.

Except for major NHS projects, local agencies will certify that their project PS&E complies with all applicable federal and state regulations and procedures. A PS&E checklist form is included as Exhibit 12-D and summarizes the items requiring local agency compliance. The local agency's project PS&E certification checklist must be submitted to the Caltrans District Local Assistance Engineer (DLAE) along with their "Request for Authorization" to proceed with construction. Local agency PS&Es are reviewed on a periodic basis as part of Caltrans' process review program.

The policies and procedures contained in this chapter reflect current federal requirements for the PS&E phase of local federal-aid projects. These instructions do not necessarily address the relevant state laws and local regulations with which a local agency must also comply.

### DEFINITIONS

Design Standards - The standards, specifications, procedures, guides and references listed herein that are acceptable for application in the geometric and structural design of federal-aid projects.

Controlling Criteria - The specific minimum criteria and controls contained in the design standards for highway projects that are considered of primary importance for safety. Deviations from these controlling criteria require design exception approval.

Cost-Effectiveness/Public Interest Finding – A written document outlining the basis for a proposed deviation from a standard procedure as required in Title 23 of the Code of Federal Regulations. The finding contains supporting documentation such as cost/benefit analysis, product compatibility, etc., and it includes reasons that the proposed deviation is considered to be cost-effective or for the public's best interest. Exhibit 12-F is a preprinted blank form that should be used by local agencies to prepare a "Cost-Effectiveness/Public Interest Finding". FHWA approval is required for local agency projects that are "FHWA Full Oversight," and Caltrans' approval is required for local agency projects that are "State-Authorized" on the State Highway System. The City or County Public Works Director's approval is required for local agency projects that are "State-Authorized" off the State Highway System or NHS.

Design Exception Approval - A process to justify, approve and document allowable deviations from controlling criteria.

Specifications - The directions, provisions and requirements contained in the contract documents for a specific construction project. Included are various proposal conditions, contract administration provisions, required construction methods, and technical requirements for materials.

Standard Specifications - A published document that contains commonly used specifications developed for use as a reference for construction contract documents.

Standard Plans - A collection of plan details developed for use as a reference for construction contract documents. Included are standard abbreviations, symbols, design notes, design conditions and data, construction details, specifications, layouts, and measurement and payment details.

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## 12.2 PS&E PROCEDURES FOR MAJOR NHS PROJECTS

For major projects on the NHS, the local agency's written PS&E procedures must be approved by Caltrans before final design is started. The DLAE will determine which projects require this approval at the field review (see Chapter 7, *Field Review*, of this manual). The procedures should identify changes from the procedures described in this chapter and as a minimum cover the following items:

- Project Management personnel and procedures
- Highway Design Standards (and any other Technical standards as appropriate)
- Consultant Selection procedures
- Project DBE participation procedures
- Review and approval procedures
- Oversight procedures if a State highway is involved
- Maintenance of records and Access

The DLAE should consult with headquarters Division of Local Assistance (DLA) for assistance with the review of the local agency procedures.

## 12.3 ENVIRONMENTAL PROCEDURES

The Code of Federal Regulations, Title 23 (Highways), Part 771.113 (23 CFR 771.113) prohibits starting work on the final design phase of a federally funded project until after approval of the final environmental document (see Chapter 6 "Environmental Procedures" of this manual). Failure to comply with this requirement will make a project ineligible for federal reimbursement.

### COMPLIANCE WITH ENVIRONMENTAL LAWS

The local agency is responsible for insuring that mitigation measures presented as commitments in environmental documents, and that conditions and restrictions, associated with regulatory permits, are incorporated into appropriate contract documents, plans, specifications and estimates prior to proceeding with major construction activities such as land acquisition or construction. Environmental documents referred to here may be a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

**Failure to meet mitigation commitments may render the project ineligible for federal reimbursement.**

Omission or modification of a mitigation commitment, thereby creating new significant environmental effects will result in the need to prepare a re-evaluation (if three years have passed since approval of the environmental document) to assess any changes that have occurred and their effect on the validity of the environmental document. Changes in project design, applicable laws or regulations, or environmental impacts may also require environmental re-evaluation, including additional studies, consultation and public involvement. If the document is an EIS, a Supplemental EIS may be required.



## PRELIMINARY DESIGN

Local agencies may complete all necessary design work needed to complete the environmental document or to comply with other environmental laws during the NEPA process. This should not be construed as an authorization to proceed with final design for the entire project, but only for those aspects of the project necessary to consider specific environmental concerns. An example of this is where such work is necessary to permit the full evaluation of environmental impacts and to permit the consideration of appropriate mitigation measures, e.g., impacts to wetlands, Section 4(f) areas and resources covered by Section 106 of the National Historic Preservation Act.

## FINAL DESIGN

Local agencies may not proceed with final design activities until FHWA has approved the final environmental document and signed the CE, Finding of No Significant Impact (FONSI) or Record of Decision (ROD); or Caltrans has approved the Programmatic CE. Granting approval to proceed with final design prior to final environmental approval would be a premature commitment to one alternative at a time when other alternatives, including the alternative of taking no action, are still being actively considered in the environmental process. Upon final environmental approval, it is incumbent upon the DLAE to immediately provide notification to the local agency and a copy of the approved environmental documents.

A summary of required mitigation measures can be found in the FONSI for projects processed with an Environmental Assessment, or in the ROD for projects processed with an Environmental Impact Statement, but detailed descriptions must be gleaned from the Final EA and EIS documents or from mitigation and/or monitoring plans (as appropriate).

Unique environmental commitments including but not limited to, excavation of historic sites, protection of public-owned public parklands, removal and disposal of hazardous materials, and the establishment of sensitive plant communities or wetland mitigation sites, are often complex and require technical expertise in the translation and transfer into final design. Projects cleared with a CE may have environmental mitigation measures, mitigation monitoring, reporting record [MMRR] associated with resources and impacts that must also be incorporated into project planning. In some cases, a plant establishment period or monitoring period is necessary and must be addressed during final design.

For complex projects, Caltrans staff is available to assist in the translation and proper transfer of environmental commitments into the final design.

Caltrans assures that mitigation measures and any required ongoing maintenance of mitigation are implemented by conducting periodic process reviews.

## PERMITS

The local agency is also responsible for translating permit conditions and restrictions into the final design. Permits include, but are not limited to, Army Corps of Engineers, Section 404 (discharge of Fill) Nationwide or Individual, Section 10 Waterways and Navigable Waters, Water Quality Certification, California Department of Fish and Game Section 1601/03 Stream Encroachment, Pollution Discharge Elimination System, or U.S. Coast Guard. Typical mitigation includes hay bales, silt fencing, dust control, riprap, soil stabilization matting, slope drain, turbidity barrier, etc.

Local agencies should work closely with the permitting agency to ensure accurate translation and proper transfer of permit conditions and restrictions (as appropriate) into final design. Conversations with regulatory agencies regarding translation of permit conditions and restrictions should be well documented.

## DOCUMENTATION

Well documented records, referencing the page numbers and/or plan sheets on which commitments are illustrated, should be maintained by the local agency, as this information will be necessary when certifying PS&E. This information will also be useful during process reviews.

## 12.4 METHOD OF CONSTRUCTION

### CONTRACTING METHOD

Except as noted below, all federal-aid construction projects must be completed by contracts awarded to the lowest responsible bidder of a competitive bid process (23 CFR 635.104). In addition, local agencies may not, under any circumstances, negotiate with a bidder prior to award to reduce the price of a construction contract.

Occasionally, situations arise which may support the use of a contracting method other than competitive bidding. Noncompetitive construction contracting may be approved under the following conditions:

- When an emergency exists of such magnitude that work cannot be delayed
- There is only one organization qualified to do the work
- Competition is deemed inadequate after soliciting bids
- When it is more cost effective to do the project by “force account” (defined below)

The use of a non-competitive contracting method must be thoroughly justified in writing, documented in the project files and retained for future reference. For local federal-aid projects that are subject to FHWA Full Oversight (see Chapter 2, *Roles and Responsibilities*), justification must be submitted to the DLAE for FHWA’s review and approval.

### FORCE ACCOUNT (DAY LABOR)

Federal regulations (23 CFR 635.203) defines “force account” as the direct performance of construction work by a local agency, railroad, or public utility using labor, equipment, materials and supplies furnished by them and under their direct control. Payment under force account is based on the actual cost of labor, equipment, and materials furnished, with consideration for overhead and profit.

Since work by force account is an exception to the normal contract method, which is based on competitive bidding, each local agency must also look to its own charter and applicable state code(s) when considering work by force account.

The performance of work by force account on a federal-aid project may be appropriate when:

- It is determined that the rights or responsibilities of the community are so affected as to require a special course of action, including a lack of competition or unreasonable bids (must be documented).
- By the inherent nature of the operation, it is deemed cost-effective to perform minor adjustments of railroad and utility facilities while the major work is still accomplished by competitive bidding (the use of force account work under this circumstance has been predetermined to always be cost-effective without further documentation or authorization).
- It is deemed cost-effective to perform some work (incidental to the main purpose of the project and other than minor adjustments of railroad and utility facilities), while the major work is still accomplished by competitive bidding.

A public interest finding fully justifying the use of force account work on a local federal-aid project must be prepared by the local agency. The documentation should include:

- An identification and description of the project and the kinds of work to be performed
- A comparison of the detailed cost estimates for work by force account versus a competitive bid contract
- An estimate of federal funds to be provided based on the reimbursement ratio of the qualifying costs
- The reason(s) the use of work by force account is considered to be cost-effective or an emergency
- An authorization by the City or County Public Works Director authorizing local agency forces to perform the work and certifying that the documentation reflects the true and current estimates of costs to perform the work.

The cost estimates for competitive bidding may be based on unit prices, including any engineering and administrative costs necessary to prepare, monitor, and close-out the project. Unit prices must be based on the estimated actual cost of performing the work but shall not exceed unit prices currently being obtained by competitive bidding on comparable construction work in the same general locality.

Incidental force account work must be carefully incorporated into a project's PS&E package. The local agency must keep precise project records documenting: the date(s) of authorization, actual work performed, date of performance, and costs for personnel, materials and equipment. Documentation of costs should include:

- Personnel
  - Time sheets
  - Salaries and payrolls
  - Foreman's reports
- Materials
  - Invoices for materials and supplies, and for any special services
  - Cost of producing materials supplied by the local agency
- Equipment

- Time and cost for using equipment owned by the local agency
- Time and rates for using rented equipment

Project records must be kept at least three years after the federal government completes a final voucher of the project.

## EMERGENCY WORK

In an emergency situation competitive bidding may be waived on any of the federal-aid programs, and the work may be performed by either force account or negotiated contract. For projects that are not exempt from FHWA oversight, the waiver shall be approved by the DLAE. An emergency is a situation that requires emergency repair work, as provided under Emergency Relief (ER) Program (see Chapter 11 “Disaster Assistance” in the *Local Assistance Program Guidelines*) or when a major element or segment of a highway system has failed and the situation is such that competitive bidding is not possible or is impractical. Competitive bidding under such circumstance may not be possible or may be impractical because immediate action is necessary to:

- Minimize the extent of the damage
- Protect remaining facilities, or
- Restore essential travel

As an example: A local agency has a bridge programmed for replacement, using HBRR funds, and has begun preliminary engineering on the bridge replacement project. Before the local agency completes the design of the bridge a major storm does such damage to the bridge that to repair the bridge is not practical. At this point, for projects that are exempt from FHWA oversight, the local agency could contact their DLAE to be granted a waiver (“Authorization to Proceed”) so as to begin negotiations with contractor(s) to replace the bridge, using HBRR funds, and using the plans that have been completed to date.

It should be noted that this waiver to competitive bidding only applies to emergency repairs as defined above, reconstruction work and permanent repairs, that can be separated from emergency repairs, are to be performed using the competitive bidding process.

## 12.5 VALUE ANALYSIS

### INTRODUCTION

The National Highway System Designation Act of 1995 established a program to improve project quality, reduce project costs, foster innovation, eliminate unnecessary and costly design elements, and ensure efficient investments by requiring the application of value engineering (VE) to all federal-aid highway projects on the National Highway System (NHS) with an estimated cost of \$25 million or more.

In accordance with the federal-state relationship established under the federal-aid program, State highway agencies shall assure that a VE analysis has been performed on all applicable projects and that all resulting approved recommendations are incorporated into the plans specifications and estimates.

Under Caltrans' delegation authority, the responsibility of assuring that VE analysis has been performed shall be delegated to the local agency administering their project.

## DEFINITIONS

Project - A portion of a highway that a local agency proposes to construct, reconstruct, or improve as described in the preliminary design report or applicable environmental document. A project may consist of several contracts or phases over several years.

Value Engineering - The systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the project, reliably, and at the lowest life-cycle cost without sacrificing safety, necessary quality, and environmental attributes of the project.

## PROCEDURES

Local agencies must establish programs to assure that VE studies are performed on all federal-aid highway projects on the NHS with an estimated cost of \$25 million or more. This cost is the total cost of the project, from preliminary engineering through construction. Value engineering studies shall follow the widely recognized systematic problem-solving analysis process that is used throughout private industry and governmental agencies. Studies must be performed using multi-disciplined teams of individuals not personally involved in the design of the project. Study teams should consist of a team leader and individuals from different specialty areas, such as design, construction, environmental, planning, maintenance, right of way, and other areas depending upon the type of project being reviewed. Individuals from the public and other agencies may also be included on the team when their inclusion is found to be in the public interest.

For VE Studies of projects on the State Highway System, it is advisable to leave Caltrans' participation on the VE team.

This process concludes with a value analysis report that contains the approved recommendations. A copy of this report shall be forwarded to the District Value Analysis Coordinator (DVAC) in the district that is programming the project. The DVAC will submit this report to the value analysis branch in headquarters, who will then include it in their annual report to FHWA.

As a guide, Chapter 19 "Value Analysis" of the *Project Development Procedures Manual* may be used. The DVAC should be consulted for applicable sections.

## 12.6 HISTORY OF METRICATION

### TRANSITION FROM METRIC UNITS TO U.S. CUSTOMARY UNITS

The 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) mandated that all PS&Es for federal-aid construction projects use metric units after September 30, 1996.

In 1993, Caltrans adopted the International System of Units (SI:a.k.a. the Metric System) as our preferred system of weights and measures to comply with federal law. The law has subsequently been changed making the use of the Metric System optional. A decision document was approved on August 20, 2004, committing Caltrans to re adopt the U.S. Customary (English) system of units and measures as its preferred system. Caltrans began its transition from metric units to U.S. Customary system in March 2005. Caltrans Standard Plans, Standard Specifications and Standard Special Provisions have been converted to U.S. Customary units.

Beginning April 1, 2006, PS&E for all projects on and off the SHS (including those administered by local agencies) must be in U.S. Customary (English) units. During the transition from metric units to U.S. Customary units, either English or metric units may be used when the local agency, or their consultant, prepares the final PS&E package for bridge retrofit projects. On the other hand, English units must be used when Caltrans' consultants prepare the final PS&E package for seismic retrofit design. Regardless of the units used, both the bridge and roadway units must be the same (see Chapter 7, "Seismic Safety Retrofit Program," of the *Local Assistance Program Guidelines* [LAPG]).

### CONVERSION TO U.S. CUSTOMARY (ENGLISH) UNITS

There are two ways to convert from metric units to U.S. Customary units:

- "Soft" conversion - a direct mathematical conversion to an exact or nearly exact English equivalent, for example: a 3.6 meters lane can be "soft converted" to 11.811 feet.
- "Hard" conversion - a rounded, rationalized, English number that is convenient to work with and easy to remember, for example: the old metric standard lane width of 3.6 meters (see Chapter 300 of the Caltrans *Highway Design Manual*, 5th edition) is 12 feet.

The Institute of Transportation Studies - University of California Berkeley (ITS), through the Cooperative Training Assistance Program (CTAP) and the Local Technical Assistance Program (LTAP), offers training courses in understanding metric conversion for local agencies. Also available through ITS are: AASHTO's *Guide to Metric Conversion*, Caltrans' booklet entitled *Getting into Metrics*, and CD-ROM metric training packages.

## 12.7 PLANS

Project plans shall describe the location, design features, and construction requirements in sufficient detail to facilitate the construction, contract control and estimation of construction costs for the project.

A local agency may use the Caltrans *Drafting and Plans Manual* as a guide for preparing

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contract plans. This manual is available from Caltrans Central Publications and Distribution Unit at 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone No. (916) 445-3520.

## DESIGN STANDARDS

Standards for design of federal-aid highway projects are contained in Chapter 11, *Design Standards* of this manual.

## DESIGN EXCEPTIONS

The Public Works Director or the person to whom approval authority has been delegated shall sign approval for design exceptions. The person with approval authority must be a registered Civil Engineer in the State of California. Additional procedures concerning documentation requirements and delegation of this approval authority shall be in accordance with Chapter 11, *Design Standards*, of this manual.

## PLAN SHEET AND SPECIFICATION SIGNATURES

On local agency federal-aid projects, the title sheet of the plans and specifications shall bear the signature and seal or stamp, the date of signing and sealing or stamping, and the expiration date of the licensed professional engineer in the State of California, who is the local agency's responsible person in charge for the type of plans and specifications being signed. Additional local agency signatures on the title sheet are optional. Plans and specifications for projects advertised, awarded and administered by the local agency do not include the State Engineer's signature, except as required for a state encroachment permit and/or cooperative agreement. The title sheets of the plans and specifications must also show the federal-aid project number.

Other plan sheets (including typical section sheets) must bear the signature of the professional engineer under whose direction the sheets were prepared. Signature of the sheets may be delegated to a California registered engineer retained by the local agency to prepare the plans.

## STANDARD PLANS

Caltrans *Standard Plans* shall be used for locally sponsored projects on the SHS.

The following standard plans are acceptable for use with local federal-aid projects off the SHS:

- The current edition of the Caltrans *Standard Plans*
- The current edition of the *Standard Plans for Public Works Construction*, developed and promulgated by the American Public Works Association - Southern California Chapter and the Associated General Contractors of California - Southern California Districts

In addition to the above, standard plans which are developed locally for non-federally

funded projects may be used on local federal-aid projects. The local standard plans shall be signed (with registration number) by the local agency's responsible person in charge who must be registered in California in the professional field for the type of standard plan being signed. Details included in local standard plans used for projects on the NHS shall meet statewide geometric standards.

Bridge construction details included in local standard plans shall meet the Caltrans' bridge design standards.

When a local agency requests structure-review assistance from Caltrans, Caltrans *Standard Plans* must be used, as appropriate, for the structure portion of the project. However, Caltrans' review will be contingent upon availability of staff.

## EROSION CONTROL PLANS

Erosion control measures and practices shall be taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed.

Emphasis shall be placed on erosion control in the preparation of PS&E. All reasonable steps shall be taken to ensure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

The AASHTO *Highway Drainage Guidelines*, Volume III, and *Erosion and Sediment Control in Highway Construction*, 1992, are guidelines to be followed on all construction projects. These guidelines are not intended to preempt any local requirements or State law if such requirements are more stringent.

Federal-aid funds shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

## TRAFFIC CONTROL PLANS

A "traffic control plan" is a plan or procedure for handling traffic through or around a specific highway, street work zone or project to provide safety for motorists and workers. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects.

A traffic control plan must be developed specifically for each construction project and must be consistent with the *Standard Plans* and the *Manual of Traffic Controls for Construction and Maintenance Work Zones* (published by Caltrans) or Part VI - "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations" of the *Manual of Uniform Traffic Control Devices* (MUTCD) (published by the FHWA).

The degree of detail in the traffic control plan depends on the project's complexity and degree to which construction activity interferes with traffic. The scope of the traffic control plan should be determined during the preliminary design phase of the project. Caltrans uses the following guidelines to establish the scopes of traffic control for

state highway projects:

- For expressway work requiring lane closures or shifting of traffic, drawings are required (a Caltrans standard plan sheet has been developed for such lane closures).
- For conventional multi-lane highways, where widening or reconstruction requires lane closures or shifting traffic for stage work, drawings are preferred. The Caltrans standard plan sheet shows a typical lane closure.
- For resurfacing and minor repair or reconstruction work on two-lane highways requiring one-way traffic control, a reference to standard plans or a manual is adequate for most projects. Where special problems are apparent, additional special provisions may be written (e.g., restricting hours of lane closures, etc.) and a plan showing the placement of signs, positioning of flagger, etc., may be added provided the plan does not reduce the established standards.

Contract provisions may permit contractors to develop and use their own traffic control plans and if the local agency finds that these plans are better than those provided in the PS&E. Any changes to the traffic control plans included in the approved PS&E must be reviewed and approved by the local agency's Resident Engineer, if registered, or at a higher level as required to satisfy the need for registration.

The PS&E should specify the method of payment for providing, installing, moving, replacing, maintaining, and cleaning traffic control devices required by the Traffic Control Plan. Suitable force account procedures may be utilized for traffic control items. The lump sum method of payment should be used only on very small projects and projects of short duration. Payment for traffic control items incidental to other items of work should be discouraged.

All persons responsible for the development, design, implementation and inspection of traffic control shall be adequately trained. Local agency engineers may contact the Caltrans DLAE for information concerning the availability of traffic control training.

## **TRANSPORTATION MANAGEMENT PLANS**

In general, a Transportation Management Plan (TMP), formerly called "Traffic Management Plans," is needed if construction work on an existing roadway already experiencing recurrent delays (or is expected to experience delays due to construction activity) causes a significant increase in recurrent delays over an extended period of time. "Significant traffic delay" is any additional delay beyond the existing conditions normally experienced by travelers through the traffic corridor as determined by the Traffic Engineer or project engineer. TMPs may be complex or may be very simple, with one or two activities added to the traditional traffic-handling practices. TMPs consist of activities, which are normally eligible for reimbursement with federal-aid funds, as normal construction expenditures. Project planning can include other considerations, such as special construction materials and incentive/disincentive provisions, which are also permitted on federal-aid projects.

Typical activities include (but are not limited to): 1) media outreach, 2) public information/relations, 3) operational improvements through traffic engineering including signs, signals (installation and upgrade, interconnect and actuated control) and markings,

lighting improvements, changeable message signs, restricted moves during peak hours, 4) telecommuting incentives, 5) ridesharing, carpooling, and vanpooling activities, 6) enhancements for transit service and parking facilities, 7) intersection widening, 8) detour paving, 9) traffic control officers, and 10) comparable improvements on alternate and parallel roadways used for detour or diversion.

TMPs are required for all reconstruction, rehabilitation, and other projects (including projects on the SHS not funded by the state), if significant traffic delays are anticipated. Determination of "significance" should be made on a project-by-project basis. Factors involved in this decision should include: 1) cost-effectiveness, 2) safety, 3) public reaction, 4) expected delays, 5) availability of detours and alternate routes, and 6) duration of project.

Additional information on TMPs can be obtained from the TMP Coordinator in headquarters, Caltrans, Traffic Operations Program, or by reference to the Caltrans *Transportation Management Plan Guidelines*.

## AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE PLANS

Within the project limits, the plans (and specifications if applicable) must comply with the federal ADA and the California and Local Building Codes. For construction or alteration that commenced after January 26, 1992, *Title 28 Code of Federal Regulations, Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services"* or *Title 28 Code of Federal Regulations, Part 36 "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,"* including "Appendix A" require each new or altered facility (includes roads and streets) or part of a facility constructed or altered by, on behalf of, or for the use of a public entity shall be designed and constructed or altered in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Each altered facility shall to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to, and usable by individuals with disabilities. As mentioned in Chapter 11 "Design Standards," "Title II-6.6000" of the Department of Justice's "Technical Assistance Manual," states that when streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs, or other barriers to entry from a sidewalk, or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. The "Curb Ramp Details" included in the Caltrans "Standard Plans" fully comply with both the federal and state requirements for curb ramps. It is the local agency's responsibility to determine, other than for resurfacing, when the project is considered to be an "alteration".

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## 12.8 STANDARD SPECIFICATIONS

The specifications for a construction contract include the requirements contained in the standard specifications and special provisions written specifically for a contract. The special provisions provide the technical contract requirements applicable to the specific project construction features as well as legal and administrative requirements peculiar to the project.

A list of federally required contract provisions, contractor certifications, as well as contract provisions requiring prior justification/approval for local federal-aid construction projects is included in Exhibit 12-D *PS&E Checklist* in this chapter. A complete description of these contract provisions/requirements and their application is provided in this section

### ACCEPTABLE STANDARD SPECIFICATIONS AND SPECIAL PROVISIONS

The local agency must use Caltrans *Standard Specifications* and *Standard Special Provisions* for locally sponsored projects on the SHS.

The following standard specifications are acceptable for use on all local federal-aid projects off the SHS:

- The current edition of the Caltrans *Standard Specifications and Standard Special Provisions*,
- The current edition of the *Standard Specifications for Public Works Construction* (commonly referred to as the “*Green Book*”), developed and promulgated by the American Public Works Association, Southern California Chapter and the Associated General Contractors of California, Southern California Districts.

In addition to the above, standard specifications, which are developed locally for non-federally funded projects may be used for local federal-aid projects that are off the NHS. However, the use of local standard specifications and standard special provisions are subject to the following conditions:

- In the event that any conflict arises between the local standard specifications and the local assistance procedures contained in this manual or elsewhere, the local assistance procedures shall apply
- Bridge construction methods and materials specifications included in local standard specifications shall meet the bridge requirements of the Caltrans *Bridge Design Specifications*.

## CALTRANS SPECIFICATIONS ON THE INTERNET

Electronic files containing Caltrans' standard specifications, standard special provisions, and federal contract "boilerplate" (Form FHWA 1273 and other Required Federal Contract Provisions) are available from the Caltrans Engineering Service Center (ESC). The ESC operates a World Wide Web (WWW) site accessible via the Internet.

- First access the Caltrans Home Page at [www.dot.ca.gov](http://www.dot.ca.gov)
- Then call up the ESC Home Page, and
- Finally, call up the Office of Office Engineer Home Page. Then go to "Master" at <ftp://trescftp.dot.ca.gov/pub/Highway-Specs/SSPs/Boilers/Masters>.

For further assistance in connecting with the Internet, local agencies should contact their Internet service provider.

Caltrans also provides a sample set of highway contract provisions for local assistance projects as explained in "Sample 'Boiler Plate' Contract Documents on the Internet" below.

For local agency projects to be advertised, awarded and administered by Caltrans, Caltrans boilerplate specifications are inserted by Caltrans.

### SAMPLE "BOILER PLATE" CONTRACT DOCUMENTS ON THE INTERNET

Microsoft Word versions of a complete sample set of "Boiler Plate" construction contract documents are available on the Internet on the Caltrans Local Assistance home page at: <http://www.dot.ca.gov/hq/LocalPrograms/public.htm> Follow the directions in the home page to "Sample Boiler Plate Contract Documents."

The file can be downloaded and edited. This file includes a sample Notice to Contracts & Special Provisions as well as a Sample Proposal and Contract. These documents are in accordance with the *July 1999 Caltrans Standard Specifications and Standard Plans*. They are edited versions of the *Caltrans Office Engineers Standard Special Provisions* and other contract documents, which are used for Caltrans highway construction contracts.

## Contents

The Notice to Contractors & Special Provisions are combined into one document. The Notice to Contractors provides prospective bidders with the bid opening date, time and location where bids will be received and opened; a brief description of the project; the Disadvantaged Business Enterprise (DBE) Availability Advisory (see Chapter 9, Section 9.8) time and location of any pre-bid meetings and notice that the project is subject to Buy America provisions. The Engineer's Estimate and location for the purchase of plans and specifications as well as reference to federal wage and rate information are also included.

The Special Provisions (along with the Caltrans Standard Specifications) specifies to the contractor the terms of the contract including, but not limited to, when the contractor is to start, number of working days, liquidated damages, payment, work operations and items of work.

The Proposal and Contract are also combined into one document. The Proposal is for the bidder to complete. In addition to the name, address, etc., it contains the Engineer's Estimate, list of subcontractors, EEO certification, Public Contract Code requirements, Noncollusion Affidavit, Debarment and Suspension Certification, Nonlobbying Certification, and Bidders Bond. The Contract includes an agreement, Engineer's Estimate, payment bond, performance bond, local agency DBE information, federal wage rates, and Disclosure of Lobbying Activities.

This package is based on the way Caltrans prepares and administers construction contracts. It contains specifications that may not be required on locally administered projects. Therefore, the Home Page will include appropriate disclaimers for the use of this "Boiler Plate."

For local agency projects to be advertised, awarded, and administered by Caltrans, the Caltrans Boiler Plate specifications are inserted by Caltrans.

## 12.9 REQUIRED FEDERAL CONTRACT PROVISIONS

### GENERAL FEDERAL REQUIREMENTS

A general special provision is required to reference FHWA Form 1273, Performance on Previous Contract, Noncollusion Provision, and Participation by Minority Business Enterprises In Subcontracting. Caltrans standard special provision (Section 14) is required or equivalent provision may be used.

### FORM FHWA 1273

Form FHWA 1273 (included in Exhibit 12-E) is a package of federally required contract provisions that must be included as special provisions for all federal-aid projects.

#### I. GENERAL

This section sets forth the general provisions of Form FHWA 1273.



**Incorporation of Form FHWA 1273 into the contract, subcontracts, and purchase orders.** The provisions apply to all work performed on the contract including work performed by subcontract. The Form FHWA 1273 is required to be physically incorporated into each contract, subcontract and subsequent lower-tier subcontracts. The provisions may not be incorporated by reference.

Failure of the local agency to incorporate the Form FHWA 1273 in the contract is considered an unrecoverable project deficiency and shall make the construction phase of the project ineligible for federal reimbursement (see Chapter 20, “Deficiencies and Sanctions” of this manual).

The prime contractor is responsible for compliance with the requirements by all subcontractors and lower tier subcontractors. Failure of the prime contractor to comply with this requirement is grounds for local agency termination of the contract with the contractor and debarment of the contractor by the FHWA.

**Modification of Form FHWA 1273.** Sections IV (Payment of Predetermined Minimum Wages), Section V (Statements and Payrolls), Section VI (Record of Materials, Supplies and Labor), Section VII (Subletting or Assigning the Contract), and Section VII (Subletting or Assigning the Contract) of Form FHWA 1273 need not be included in the contract provisions for some projects, as described below. If the project is exempted from any of these provisions, the appropriate section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

**Use of Local Hiring Preference.** The local agency shall not include contract provisions that require preferences to hire locally on any federal-aid contract. The contract provisions included in Form FHWA 1273 also require that the contractor not discriminate against labor from any other State.

Any contract that includes provisions that require a contractor to give any preference in hiring (with the exception of Indians living on or near a reservation on eligible projects) shall make the contract ineligible for federal reimbursement (see Chapter 20 “Deficiencies and Sanctions” of this manual).

**Use of Convict Labor.** Construction work shall not be performed by convict labor within the site boundaries of any federal-aid construction project. An exception is “labor performed by convicts who are on parole, supervised release, or probation.” The use of convict labor restricts competition because the labor rates are below market costs and force account rates. A person on a daily-release program could be eligible to work on a federal-aid project if that person was employed by the contractor and was being paid at least the minimum prevailing wage.

## II. NONDISCRIMINATION

On all federal-aid construction contracts and all related subcontracts of \$10,000 or more, nondiscrimination provisions prohibit discrimination because of race, color, religion, sex, national origin, age or disability. This applies to the contractor’s employment, solicitations, selection of subcontractors and procurement of materials. Contractors are required to have an Equal Employment Opportunity (EEO) policy that provides: for affirmative action in employment; a designated EEO officer to administer the EEO

program; and posted notices or posters containing EEO information. The contractor shall not discriminate in recruitment and is required to review the project sites, wages and personnel action for compliance with EEO policy. The contractor is required to notify employees regarding available training and provide opportunities for the improvement of skills for minorities and women. The contractor should cooperate with the union to incorporate EEO clauses.

Non-compliance with EEO specifications may be a breach of contract. Payment may be withheld or the contract canceled. The local agency must have staff to conduct reviews, check for required posters and make noncompliance determinations.

### III. NONSEGREGATED FACILITIES

On all federal-aid construction contracts and all related subcontracts of \$10,000 or more; organizations, firms, subcontractors and suppliers shall certify (in the contract) that they maintain nonsegregated facilities, which conform to requirements of 41 CFR 60.1.8. The only exception to the nonsegregated facilities provision is access for the disabled.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGES

The payment of predetermined minimum wages applies to all federal-aid construction contracts exceeding \$2,000 and all related subcontracts, except for projects not located on a federal-aid route.

Note: All public roads other than those functionally classified as local roads or rural minor collectors are considered Federal-aid Routes (see Chapter 3, "Federal-Aid Routes and Functional Classifications" in the *Local Assistance Program Guidelines*).

The Davis-Bacon Act of 1931 was enacted to prevent contractors from importing cheap labor from outside the area. The U.S. Department of Labor enforces these statutes and determines the minimum federal wage rates. The federal wage rates are determined by a review of payroll or a survey based on wage data from active projects. Disputes involving wage rates shall be resolved using local agency - U.S. Department of Labor procedures.

Notice of wage-rate decisions is published in the *Federal Register*. The minimum federal wage rates are also available from the Department of Labor via the Internet at [www.gpo.gov/davisbacon](http://www.gpo.gov/davisbacon). Click on "Browse all determination by State" then click on "California".

All employees must be classified with a wage-rate determination as set forth by the U.S. Department of Labor. There are provisions for fringe benefits and requirements for paying less than the full wage rate for apprenticeships and trainee programs. Apprenticeship and trainee programs are subject to other Department of Labor requirements. The contractor and subcontractors should pay employees at least the minimum wage and fringe benefits specified for the classification of work performed. The local agency is responsible for including the project wage rates in the federal-aid contract.

The local agency has the authority to withhold funds from the progress payments to the prime contractor for under payment to employees and the subcontractor full wages. The contractor is required to pay overtime at one and one half times the employee's basic pay rate for time worked in excess of eight (8) hours per day. Liquidated damages may be

held for the days the contractor did not pay overtime. The local agency can enforce the withholding of \$10 per day against the contractor or subcontractor for each underpaid employee. Other actions such as termination of the contract or legal action may be enforced if there are any serious violations of the contract.

Contractors must pay the **higher** of either the minimum federal wage rates or State prevailing wage rates.

State prevailing wage rates are available from the State Department of Industrial Relations, Division of Labor Statistics.

## V. STATEMENTS AND PAYROLLS

This section of Form FHWA 1273 applies to all federal-aid construction contracts exceeding \$2,000 and all related subcontracts, except for projects not located on a federal-aid route (see “Note” above).

Under the Copeland Act, workers are protected from paybacks to employers. The contractor and subcontractors must furnish weekly-certified payroll statements so that the Davis Bacon requirements can be verified.

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

This section of Form FHWA 1273 applies to all federal-aid projects in excess of \$1 million that are on the NHS excluding force account, beautification and railroad protective device projects.

Under this provision, the contractor is required to complete and submit a “Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds” (see FHWA Form 47 as Exhibit 17-H of this manual).

## VII. SUBLETTING OR ASSIGNING THE CONTRACT

This section of Form FHWA 1273 applies only to federal-aid highway construction projects on the NHS.

For local agency projects on the NHS, the contractor is required to perform work amounting to not less than 30 percent of the original contract amount with his/her own organization, excluding specialty items.

No portion of the work may be sublet, assigned or otherwise subcontracted without the written consent of the local agency.

Conformance with State public contract law regarding subcontracting shall be provided elsewhere in the contract provisions.

Note: Local agencies which use *Caltrans Standard Specifications* or the *Standard Specifications for Public Works Construction (Green Book)* and choose to use the 30 percent (NHS Projects only) or the no limit option (Non NHS projects) specified for federal-aid projects must include a special provision to override the *Caltrans Standard Specifications Section 8-1.01*, or the *Green Book Specifications Section 2-3.1*, which require that the minimum percentage of work

that a contractor must perform with its own organization is 50 percent excluding any identified specialty items. The no limit for subcontractors' option for Non-NHS projects also requires that the FHWA boiler plate provisions (Form FHWA 1273) Section VII must also be revised to exclude the 30 percent requirement.

### **VIII. SAFETY: ACCIDENT PREVENTION**

On all federal-aid construction contracts, the contractor must comply with all federal, State, and local laws governing health, safety, and sanitation. The contractor must protect the life and health of employees and safety of the public and property. Laborers and mechanics should not be allowed to work under unsanitary or hazardous conditions as determined by construction safety standards. The Department of Labor has right of entry to any construction site of a contract for inspection or investigation of Occupation, Safety, and Health Act (OSHA) standards. The local agency must enforce State safety standards, report violations, and provide cooperation.

### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

On all federal-aid construction contracts, the use of false statements is a felony. False claims for the purpose of obtaining payments against federal funds are subject to a \$2,000 fine per each violation. Willful distortion or misrepresentation of any facts related to the project violates federal law. A "false statements" poster (Form FHWA 1022) must be posted on the project site. Copies of the poster may be obtained through Caltrans or FHWA Offices.

### **X. CLEAN AIR ACT AND WATER POLLUTION CONTROL ACT**

On all Federal-aid construction contracts and all related subcontracts of \$100,000 or more, concrete or asphalt plants used in construction must meet air standards of the Clean Air Act and the water quality standards Federal Water Pollution Control Act.

Form FHWA 1273 implements the EPA regulations, which requires violating facilities be listed and not used on government contracts. Use of Form FHWA 1273 constitutes a certification by the contractor that the facilities being used on the contract are not under consideration for inclusion on the EPA's "List of Violating Facilities." The contractor is required to inform the local agency of any notification from EPA showing that the facility may soon be on the list.

The EPA's "List of Violating Facilities" appears in the *Federal Register*. Changes to this list are published weekly in the *EPA Environmental News*.

The "List of Violating Facilities" consists of the following sub lists:

- Violating Facilities of the Clean Air Act (mandatory listed) and
- Facilities that are or have been in recurring noncompliance with clean air or water standards and have one or more of the following:
  - A conviction under the Clean Air Act under Section 113C(2)
  - Any injunction or judgment including consent decrees or other forms of civil ruling by a federal, state, or local court issued because of noncompliance with

clean air and water standards

- A criminal conviction by a State or local court based on noncompliance of the clean air or water standards
- Violation of an administrative order issued under Sections 113(a),(d), 167, or 303 of the Clean Air Act or Section 309(b) of the Clean Water Act due to noncompliance
- An enforcement action filed by the EPA in federal court under Sections 113(b), 167, 205, or 211 of the Clean Air Act or Section 309(b) of the Clean Water Act due to noncompliance with standards

## **XI. DEBARMENT, SUSPENSION AND INELIGIBILITY CERTIFICATION**

On all federal-aid construction contracts and all related subcontracts of \$25,000 or more, the contractor and lower tier participants must certify they are in compliance with this provision. This includes subcontractors, material suppliers and vendors.

Each participant in the contract must certify “that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency and they have not been convicted or had civil judgment rendered within the past 3 years for certain types of offenses” (see Attachment E in Exhibit 12-E). It is the administering agency’s responsibility to assure that the contractor is not suspended or debarred from federal contracts. A publication titled, “A Listing of Parties Excluded from Federal Procurement and Non-procurement Programs” is available electronically via the internet at <http://epls.arnet.gov>

## **XII. LOBBYING CERTIFICATION**

On all federal-aid construction contracts and to all related subcontracts of \$100,000 or more, federal funds may not be used to provide financial gain to a member of congress or a federal agency. Awarding a federal-aid contract to a constituent would be an example of financial gain. This applies to contractors as well as subcontractors. A certification that the contractor has not and will not use federal funds to make any payments for lobbying must be included in the contract proposal (see Exhibit 12-E, Attachment F).

Payments of nonfederal funds to any lobbyist must be disclosed on Standard Form LLL “Disclosure of Lobbying Activities” (see Exhibit 12-E, Attachment G), and if there are disclosures, included in the contract proposal.

## **CONTRACT TIME**

Contract time is defined as the maximum time allowed in the contract for completion of all work contained in the contract documents. This time can be established in the specifications by either a specific completion date or a fixed number of calendar days. Contract time often becomes an issue when the traveling public is inconvenienced without any apparent reason. While there may be several reasons for a project to appear dormant, frequently the cause can be traced to excessive contract time or poor contractor scheduling.

For projects on the NHS, the contract time shall be specified in the bidding documents and shall be monitored by the administering agency. Specification of contract time is optional for projects off the NHS.

Insufficient contract time can result in higher bid prices, increased time overruns and claims, inefficiencies, and safety problems. On the other hand, excess contract time can result in increased inefficiencies, equating to costs, to both the local agency and contractor. In addition, delays and inconvenience to the public may be unnecessarily extended.

Caltrans will periodically perform a process review of local agency procedures for determining contract time to assess if the resulting contract times are appropriate. There are several different techniques used to determine contract time. The *FHWA Technical Advisory 5080.15, Construction Contract Time Determination Procedures*, describes time determination techniques in detail, and is available in the appendix of the *FHWA Contract Administration Core Curriculum*.

The local agency should strive for the shortest practical duration of traffic interruptions during highway construction. Innovative contracting methods including incentive/disincentive (I/D), lane rental, A+B contracts or other contract provisions for early completion are available to minimize traffic inconvenience and delay. These provisions are available from Caltrans. The *FHWA Technical Advisory 5080.10, Incentive/Disincentive for Early Completion*, describes this technique in detail, and is available in the appendix of *FHWA Contract Administration Core Curriculum*.

## LIQUIDATED DAMAGES

The term *liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a local agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified.

Federal law requires the provision for liquidated damages on all federal-aid projects on the NHS. For projects off the NHS, this provision is optional. Liquidated damages are based on the estimated cost of field construction engineering. In special cases, liquidated damages greater than the estimated field construction engineering cost may be specified provided that detailed reasons, such as project related costs for delays and public inconvenience, are given to support the greater amount. In all cases, calculations should support the recommended rate. If project completion time is critical, then Incentive/Disincentive (I/D) provisions should be considered to motivate the contractor to complete the work sooner, and the I/D amount and time documented in the project file.

Local agencies should use the following formula to avoid excessive, or unreasonable, liquidated damages:

$$\frac{\text{L\% (See Table Below)} \times \text{Engrs Estimate} + \text{RE Ofc Expense}}{\text{Working Days}} = \text{Liq Dam/calendar day}$$

\* Resident Engineer office expenses for the life of the contract should be added unless the cost is already included in the Engineer's Estimate.

\*\* Working days used to calculate liquidated damages should not include water pollution establishment or plant establishment days.

**LIQUIDATED DAMAGES TABLE (L%)**

<b>Project Estimate</b>	<b>Project Type</b>					
	<b>Resurfacing* /Rehab</b>	<b>New Highway</b>	<b>Realignment/ Widening</b>	<b>Landscaping</b>	<b>Soundwall</b>	<b>Others</b>
Over \$30 million	10%	10%	13%	15%	15%	15%
\$10 million to \$30 million	10%	12%	15%	15%	15%	15%
\$5 million to \$10 million	10%	15%	15%	15%	15%	15%
\$750k to \$5 million	15%	15%	15%	18%	18%	15%
Less Than \$750k	15%	20%	20%	18%	20%	15%

\* Resurfacing projects include asphalt concrete (AC) surfacing, seal coats, slurry seals, etc.

The calculated liquidated damages should be rounded up in \$100 increments to determine the amount to be specified.

If the local agency uses an alternate method to determine liquidated damages for locally funded projects, this method may be used on federal-aid projects as long as it avoids excessive charges. The local agency should have a liquidated damage calculation in the project files.

## **BUY AMERICA**

On all federal-aid construction projects, current regulations require that steel and iron used be made in the United States. All foreign steel and iron materials are covered by the “Buy America” provision regardless of the percentage of steel in the manufactured product. All manufacturing processes involved in steel or iron products must occur within the United States. These processes include rolling, extruding, machining, bending, grinding, drilling, coating, welding and smelting. Domestically produced steel billets or iron ingots shipped overseas for any process and returned to the United States do not conform to this requirement.

Buy America provisions do not apply to:

- Minimal use of all foreign material in which the total delivery cost to the project site is less than \$2500 or 0.1 percent of the contract amount, whichever is greater;
- Raw materials; scrap temporary steel items such as sheet piling, bridges, steel scaffolding and false work
- Materials that remain in place at the contractor's convenience such as sheet piling and forms
- Pig iron manufactured outside the United States

A local agency shall not list an ineligible iron or steel product as "nonparticipating" in order to circumvent the Buy America requirements.

A waiver of the Buy America requirements by the FHWA Division Administrator is permitted for specific projects, specific products, specific geographical areas, or combinations if:

- Buy America is inconsistent with the public interest or
- There is not a sufficient supply of domestic materials of satisfactory quality

Approval authority for waiver of Buy America requirements has not been delegated from the FHWA to Caltrans and therefore is not delegated to the local agencies.

## DISADVANTAGED BUSINESS ENTERPRISE

In accordance with Title VI of the 1964 Civil Rights Act, all federal-aid projects are subject to the legislative and regulatory DBE requirements. The main objective is to ensure that DBE firms have an opportunity to participate in federally funded projects. Additional information regarding DBE contract availability advisories can be found in Chapter 9, "Civil Rights and Disadvantaged Business Enterprises" and Chapter 15, "Advertise and Award Project" of this manual.

Required DBE specifications and contract provisions are the following for projects with DBE availability advisories:

- DBE Program Policy
- Definitions
- DBE Contract Availability Advisory
- Eligibility Criteria



- Records and Reporting Requirements

Contracts shall contain special provisions stating that it is the local agency's policy to comply with Part 26 of Title 49, Code of Federal Regulations (CFR) and specify the contractor's obligation under these regulations.

If Caltrans' standard specifications will be used, appropriate editing of the *Sample Boiler Plate Contract Documents* will be necessary (see "*Sample Boiler Plate Contract Documents on the Internet*" in Section 12.8 of this chapter).

## NONCOLLUSION CERTIFICATION

On all federal-aid construction projects, a noncollusion certification protects the integrity of the federal-aid highway program and serves as a tool in prosecuting construction contract bid rigging cases. A noncollusion certification is required from all bidders as part of the bid proposal package (see Exhibit 12-E, Attachment D). Failure to submit the certification will render the bid ineligible for award.

## FEDERAL TRAINEES (ON-THE-JOB TRAINING)

On selected federal-aid highway construction projects, "Federal Trainee" or "On-the-Job (OJT) Training" special provisions (included in Exhibit 12-E, Attachment N) must be included in the contract provisions to establish the number of trainees for the construction contract.

The main objectives of the Federal Trainee/OJT Program are to:

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher-paying trade jobs and journeyman-level positions and
- Ensure that a diverse work force will meet future labor needs in the construction industry.

A majority of training positions on each project must be for women and minorities. If a contractor cannot meet the OJT objectives, direct recruitment efforts must be documented to show an effort at OJT compliance.

The major components of an OJT program include:

- The local agency must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The local agency should select contracts that contribute to the “Contract Training Goals.” These contracts must show the number of trainees, number of trainees upgraded to journeyman and level of skills.
- The local agency must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.
- Caltrans must determine if statewide OJT is effective.
- The contractor is responsible for recruitment and selection of trainees.
- The contractor must evaluate training based on an approved training program.
- The contractor shall report the number of trainees and jobs using Form PR1391 “Federal-aid Highway Construction Contractors EEO Report” to the local agency. The local agency shall forward Form PR1391 to the Caltrans District Labor Compliance Officer (see Exhibit 16-O of this manual).
- OJT provision costs are reimbursed by the FHWA in accordance with the Federal Requirement Training Special Provisions” included in selected contracts. Required trainees/apprentices are to be funded on the bidding schedule or by change order at \$0.80/hour; or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and OJT program administration by others.
- If the contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

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In California, federal “trainees” are considered registered apprentices. There are relatively few crafts in highway work, which utilize apprentices—bricklayers, carpenters, cement masons, electricians, equipment operators, ironworkers, pile bucks, and a few others. There are no apprentice teamsters or laborers. The ratio of journeymen to apprentices is generally 5 to 1.

With these thoughts in mind, the number of trainees established for a project should be determined by examining the extent of only that work which will be done by the apprenticeable crafts. The following procedure may be used as a guide for establishing the number of trainees for a federal-aid project.

1. If the job has less than 100 working days---no trainees.
2. Add the individual totals for the following items in the Engineer’s Estimate:
  - Excavation of all kinds
  - Embankment and backfill (but not imported borrow)
  - Portland cement concrete, all classes except precast items
  - Bar reinforcing steel and prestressing steel
  - Drive piling
  - Sound walls, masonry blocks
  - Retaining walls, bin walls, etc.
  - Concrete box culverts
  - Highway lighting
  - Signal systems, loop detectors
  - Electrical work for pumps, landscaping, etc.
  - Erect structural steel (but not “Furnish”)
  - L.S. items for buildings, restrooms, etc.
3. Using the total obtained above, determine the number of trainees from the following table:

Number of Federal Trainees

<u>\$ Value</u>	<u>No. Trainees</u>	<u>\$ Value</u>	<u>No. Trainees</u>
Under \$200,000	0	\$3,000,000	7
400,000	1	4,000,000	8
700,000	2	5,000,000	9
1,000,000	3	6,500,000	10
1,500,000	4	8,000,000	11
2,000,000	5	10,000,000	12
2,500,000	6		

Over \$10,000,000 add 1 trainee per  
\$5,000,000

**FEDERAL WAGE RATES**

The payment of predetermined minimum wages on federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 USC 113. These wage rates must be inserted in the special provision on all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted.

The federal minimum wage rates are available directly from Department of Labor Home Page under [www.gpo.gov/davisbacon](http://www.gpo.gov/davisbacon). Click on "Browse all determination by State" then click on "California". For local agencies in California to be in conformance with the federal "10-day rule," local agencies are to access the "Federal Wage Rates" ten days prior to bid opening to see if updated federal wage rates have been posted. If the updated wage rates have been posted, local agencies are required to issue an addendum to insert the updated wage rates in their contract.

Local agencies that do not have Internet access, please contact your District Local Assistance Engineer to receive federal wage rates.

**RELATIONS WITH RAILROAD**

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local

agency and the railroad company. This agreement is discussed in the *Local Assistance Program Guidelines*, Chapter 10, Section 10.6 “Local Agency/Railroad Agreements.”

FHWA approval of railroad agreements is required for nonexempt projects. A copy of the conformed agreement shall be transmitted through the DLAE for FHWA review.

The pertinent portions of this agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract. Caltrans uses standard special provisions for this section on Caltrans projects.

## CHANGED CONDITION CLAUSES

Standardized changed condition clauses are required to be included in all contracts. The Caltrans’ standard specifications and the *Standard Specifications for Public Works Construction (Green Book)* contain standard changed condition clauses. If a local agency chooses to use a different standard specifications book, the federal regulations shall still apply.

The regulation requires the use of three different clauses:

### DIFFERING SITE CONDITIONS CLAUSE

This clause provides for the adjustment of the contract terms if the contractor encounters:

- Subsurface or latent physical conditions that differ materially from those indicated in the contract, or
- Unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work

### SUSPENSIONS OF WORK ORDERED BY THE ENGINEER

This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the resident engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the resident engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency’s actions, without written notification. The local agencies may address constructive delays and suspensions, as they chose, in their standard specifications and contract administration procedures.

Suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is

suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

#### **MATERIAL CHANGES IN THE SCOPE OF THE WORK**

This clause provides for the adjustment of the contract terms if the resident engineer orders, in writing, an alteration in the work or in the quantities that significantly change the character of work. The term “significant change” shall be constructed to apply only to the following circumstances:

- The altered character of the work differs materially from that of the original contract, or
- A major item of work, as defined in the contract, is increased or decreased by more than 25 percent of the original contract quantity (adjustments shall apply only to that portion in excess of 125 percent of original contract quantity, or in case of a decrease, to the actual quantity performed)

This clause provides for adjustments resulting from formal change orders by the resident engineer, in writing, to the extent that the impacted work is part of the contract. Either party may initiate an adjustment and both must be in agreement before the work is performed. As with the suspension of work provision, this clause does not preclude the recognition of constructive suspensions or delays.

## **12.10 RESTRICTED CONTRACT PROVISIONS**

### **INDIAN PREFERENCE**

Generally, local agencies may not use local hiring practices on federal-aid construction projects. However, ISTEA permits an Indian employment preference provision for federal-aid projects on or near Indian reservations or Indian lands. Roads near an Indian reservation are those within a reasonable commute to and from the reservation. Indian preference shall be applied without regard to tribal affiliation or place of enrollment.

In setting employment goals, consideration should be given to the potential employment requirements of the contractor and core-crew. A contractor shall not layoff or terminate a core-crew employee to meet a preference goal. Any sanctions for failure to meet employment goals should be included as part of the contract.

Many tribes have a Tribal Employment Rights Office (TERO) tax, which applies to contracts performed within the reservation boundaries. FHWA will reimburse any local tax as long as it does not single out federal-aid highway construction contracts. TERO's can bill contractors for services rendered during recruitment and related support services. These fees are not eligible for federal participation. If part of a project is not within the reservation boundaries, the TERO tax shall not apply to that portion. “On” and “off” reservation portions of the project should be clearly indicated in order to avoid overpayment.

## BONDING AND PREQUALIFICATION

Bonding is grouped into three classifications which are:

- Bid bonds -- consisting of a bond, certified check or negotiable instrument submitted with the bid as assurance that the bidder will execute the contract within the specified time;
- Performance bonds -- executed with the contract to assure the contractor's obligations under the contract; and
- Payment bonds -- executed in connection with a contract to assure payment, as required by law, to all persons supplying labor and material in the contract.

Prequalification is defined "as a means of predetermining job experience and work capacity and is used to identify individuals and organizations from which the local agency may accept a bid."

The FHWA does not require implementation of procedures or requirements for prequalification, bonding, or licensing on federal-aid projects. However, if the local agency has such procedures or requirements they must conform to the FHWA's competitive bidding policy as follows:

- No procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State wherein the work is to be performed.
- No contractor shall be required to obtain a license before the submission of a bid or before the bid may be considered for award of a contract.

## PRICE ADJUSTMENT CLAUSES

On all federal-aid construction projects, price adjustment clauses may be implemented under the following conditions:

- Material costs are extremely volatile
- Suppliers are unable to provide a price quote for the full term of the contract
- Price quotes are subject to delivery or market conditions
- Shortages are expected

These provisions should be limited to materials whose price volatility may produce a large effect on contract prices. The standard adjustment(s) should be quantifiable and set out in the contract specifications. The standard adjustment(s) should be based on a price or base index, which is not susceptible to manipulation by contractors or suppliers, such as the consumer price index. Published price data may be found in the Bureau of Labor Statistics: *Producer Price Indexes*, *Engineering News Record* (weekly) or various oil-related publications with price data for oil-related products.



Some concepts for developing price adjustment clauses include:

- Price adjustment does not need to be a standard specification unless shown in the bid-proposal
- There should be upper and lower limits on adjusted compensation
- Both upward and downward adjustments should be calculated
- Only by a significant change in the index should trigger a price adjustment
- Basis of payment should clearly indicate coverage of the price adjustment clause
- Contractor should not have an option to accept or reject price adjustment compensation and the compensation should be automatically incorporated in the progress and partial payment computations.
- Compensation should not be based on actual invoiced receipts
- Upward price adjustments should not be allowed after the contract time has expired.

When local conditions warrant the use of price adjustment clauses, the following should be considered:

- Use for projects which will exceed nine months duration from bid opening to completion
- On single season contracts; provide price adjustment clauses for all price volatile materials which affect the unit costs of the major items of work
- On multiple season contracts: provide price adjustment clauses for all price volatile materials and supplies

When fuel prices are volatile, a price adjustment clause may be needed. This may occur on projects that are fuel intensive such as excavation, embankment, aggregate hauling and paving.

## PROJECT LABOR AGREEMENTS

A Project Labor Agreement (PLA), also called a union agreement, is a contract between labor unions, contractors, and governmental agencies. Presidential Executive Order 13202 (signed February 17, 2001) was issued to limit executive branch agencies from using PLAs. Essentially, executive agencies may not require or prohibit contractors to enter into PLAs. Agencies also may not discriminate against contractors based on PLAs. In addition, despite the limits on executive agencies, contractors are not barred from freely agreeing to PLAs.

Executive Order 13202 was amended to settle concerns about existing PLAs on projects with multiple contracts. Amendments in Executive Order 13208 allow an agency to request an exemption to the use of PLAs only if the PLA was in effect before February 17, 2001.

Requests for exemption must be written and must include the PLA, specific bid information, and the reason why the agency believes the exemption should be granted. PLAs are allowed only if the FHWA Administrator exempts a project. Requests for exemption should be referred to the DLAE.

Executive Orders 13202 and 13208 are available online at the following Webster:

[www.whitehouse.gov/news/releases/2001/02/20010221.html](http://www.whitehouse.gov/news/releases/2001/02/20010221.html)

[www.whitehouse.gov/news/releases/2001/04/20010406-1.html](http://www.whitehouse.gov/news/releases/2001/04/20010406-1.html)

## 12.11 OPTIONAL CONTRACT PROVISIONS

### ALTERNATE BIDS

Alternate bidding is a method used to minimize the overall cost of any federal-aid projects through increased competition. By considering alternate design schemes and construction methods, it is possible to attract the greatest number of bidders and realize the lowest possible bid prices.

Alternate bidding procedures should be used when more than one alternate is judged equal over the design period and there is a reasonable possibility that the least costly design approach will depend on the competitive circumstances. The potential for using alternates will normally be developed through design studies and value engineering analysis during project development. Moreover, there may be standard plan alternates developed for repetitive design items (i.e., drainage items, bridge structures, sound walls and pavement details, etc.).

The bidding documents and contract plans should clearly indicate the design criteria and the type of alternate designs or contractor options that will be acceptable. The contractor should be permitted to bid any designated alternate that is consistent with its expertise and equipment.

### INCENTIVE/DISINCENTIVE (I/D) PROVISIONS

FHWA's long-standing policy prohibiting bonus payments on federal-aid projects, as formerly stated in 23 CFR 635.118, was rescinded on June 13, 1984. The decision was based on the findings of National Experimental and Evaluation Program (NEEP) 24. The NEEP-24 demonstrated that the use of early completion incentive payments could be used beneficially and without abuses.

A clear distinction should be made between the intent of I/D provisions and the purpose of liquidated damages. Although they have similar mechanisms, the function of each is different. The primary function of liquidated damages is to recover costs associated with the contractor's failure to complete the project on time. On the other hand, an I/D provision is intended to motivate the contractor to complete the work on or ahead of schedule without jeopardizing quality of work. An I/D provision for early completion is

defined as a contract provision, which compensates the contractor for each day that identified critical work is completed ahead of schedule and assesses a deduction for each day that completion of the critical work is delayed. The use of I/D provisions is primarily intended for critical projects where it is essential that traffic inconvenience and delays be held to a minimum. It must be emphasized that I/D provisions should not be used routinely

A discussion of factors to consider when selecting and developing I/D projects is available in FHWA's *Contract Administration Core Curriculum* (2001) at the following website:

[wwwcf.fhwa.dot.gov/infrastructure/progadmin/contracts/coretoc.htm](http://wwwcf.fhwa.dot.gov/infrastructure/progadmin/contracts/coretoc.htm)

Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum "Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions" at the following website:

[www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm](http://www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm)

## QUALITY - PRICE ADJUSTMENT CLAUSES

Price adjustment clauses and schedules are an important and effective component of quality assurance specifications. "Quality Assurance" specifications generally include statistically based acceptance plans, require contractor process control testing, and have provisions for pay adjustments based on the degree of compliance with specified requirements. Incentives and disincentives should rationally relate to the gain or loss in service life or performance of the product. Quality assurance specifications and programs may lead to better contractor control of the quality of the product, however, they do not diminish the need for effective construction inspection.

The FHWA has traditionally endorsed the use of incentive provisions up to five percent of the unit bid price for improved quality provided they are based on readily measured physical properties that reflect improved performance. Incentives greater than 5 percent on NHS projects are considered on a case-by-case basis following an analysis of performance data. For non-NHS projects, consideration for incentives greater than 5 percent is delegated to the local agency.

A detailed discussion of the criteria (such as: typical critical physical properties, acceptance plans and pay schedules) to consider when developing price adjustment provisions are provided in FHWA's *Contract Administration Core Curriculum*.

## INNOVATIVE CONTRACTING PRACTICES

Neither the FHWA nor Caltrans have any intention of mandating the use of any of the innovative contracting practices cited below on local agencies. However, the FHWA is trying to develop a process nationwide through which states, local agencies and the industry can bring forth innovative contracting practices that they believe could result in worthwhile improvements to our traditional ways of doing business. It is FHWA's intent to try all promising concepts proposed that fall within the flexibility of the federal-aid program requirements.

A discussion on the “Cost-Plus-Time Bidding” (A+B method), “Lane Rental” and “Design/Build” innovative contracting techniques is provided in the FHWA’s *Contract Administration Core Curriculum*. Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum “Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions” at the following website:

[www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm](http://www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm)

## 12.12 MATERIALS AND EQUIPMENT

### PUBLICLY OWNED EQUIPMENT

On all federal-aid construction projects, publicly owned equipment should not normally compete with privately owned equipment on a project going out for bid. The local agency may approve the use of publicly owned equipment when justified by a public interest finding. Federal participation is permitted provided:

- The PS&E submittal provides for the proposed use
- The specifications indicate equipment availability, rates and delivery point
- The specifications include the provision that the contractor shall have the option of providing or renting all or part of the equipment

Public agencies shall not benefit from the rental of its own equipment and rental rates must be competitive. The rates for work performed by force account work should be based on an agreed unit price or actual cost. The equipment need not be included in the estimate, however the estimate should include a schedule of rates charged for use of publicly owned equipment.

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## **CONTRACTOR-PURCHASES FOR LOCAL OWNERSHIP**

On all federal-aid construction projects, equipment purchased by the local agency or by a contractor with ownership transferred to the local agency for construction engineering (CE) is not totally eligible for federal participation. Only that portion of the amortized equipment cost (over its useful life) attributable to the time the equipment is used on a federal-aid project is accounted for as CE and eligible.

Equipment is defined as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

## **CONVICT PRODUCED MATERIALS**

Materials produced by convict labor after July 1, 1991 may be used on any federal-aid projects if:

- Such materials have been produced by convicts on parole, supervised release, or probation from prison.
- Such material has been produced in a qualified prison facility and the amount produced during any 12-month period does not exceed the amount produced during the 12-month period ending July 1, 1987.

These materials are not given preferential treatment and are subject to the same requirements as materials from other sources. The contractor furnishes all materials through normal contracting procedures and selects either public or private sources of materials. Prison Industries may not bid directly on projects but may serve as a material supplier to contractors.

## **LOCAL PREFERENCES**

On all federal-aid construction projects, materials produced within the State or local area shall not be favored over comparable materials produced outside of the State or local area. Also, in-state material sources cannot be given preference over foreign materials or actions taken against materials of foreign origin unless permitted by federal law. State or local preference provisions are not allowed on federal-aid project contracts.

## **WARRANTY CLAUSES**

For projects off the NHS, local agencies may include warranty provisions in construction contracts in accordance with procedures they have developed for their non-federal projects.

For projects on the NHS, local agencies may include warranty provisions, for exempt non-NHS projects, in construction contracts in accordance with the following conditions:

- Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for federal participation shall not be covered.

- No warranty requirements shall be approved which may place an undue obligation on the contractor for items over which the contractor has no control.

The local agency shall provide documentation of these conditions in the project files. Local agencies are advised that items of maintenance are not eligible for federal participation. Including maintenance items results in the items being considered non-participating and requiring pay back of the federal funds involved.

## PROPRIETARY ITEMS

It is the policy of the FHWA not to participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project on the NHS, unless:

- The item is purchased or obtained through competitive bidding with equally suitable unpatented items.
- The local agency certifies either that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
- The item is used for research or for a special type of construction on relatively short sections of road for experimental purposes.

This FHWA policy is not applicable to local agency projects off the NHS.

The primary purpose of this policy is to have competition in selection of materials and allow for development of new materials and products. The policy further permits:

- Materials and products that are judged equal may be bid under generic specifications. If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number of acceptable materials or products listed.
- The local agency may approve a single source if it can be found that its utilization is in the public interest. The approved public interest finding shall be fully documented and retained in the project files.

Trade names are generally the key to identifying patented or proprietary materials. Trade name examples include 3M, Corten, etc. Generally, products identified by their brand or trade name are to be used all or at least a reasonable number of these materials or products should be listed. The licensing of several suppliers to produce a product does not change the fact that it is a single product and should not be specified to the exclusion of other equally suitable products.

## EQUIPMENT RENTAL RATES

Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not readily available. Therefore, the FHWA permits the local agencies to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rates schedules development by the local agency which are in conformance with the federal cost principles and the FHWA's policy

contained in the *Contract Administration Core Curriculum*, published by the FHWA. Caltrans' Equipment Rental Rates are in conformance with these requirements.

## 12.13 ESTIMATES

The estimate used to authorize the construction phase of a federal-aid project shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the local agency and FHWA and to permit an effective review and comparison of the bids received.

Initially, a preliminary estimate is prepared by the local agency, which includes the basic items that a contractor will be asked to bid. This is a confidential document, which represents the local agency's best estimate of a fair and reasonable price for the items or work to be performed. As such, the Engineer's Estimate should not be made available to contractors and the general public prior to opening bids. This estimate must be prepared in a format, which describes the item of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total. (Exhibit 12-A, *Preliminary Estimate of Cost*, or equivalent.)

Other estimates must also be prepared, if appropriate, for local agency furnished materials, supplemental work, construction engineering, the Federal Trainee program, and force account (day labor) work performed by the local agency. The estimates must be segregated by major construction categories. Furthermore, any items of work, which are ineligible for federal participation in a category, must be segregated from the eligible items of work.

These estimates are used to prepare the Finance Letter and the "Request for Authorization for Construction." After bids are opened and the project has been awarded, a Detail Estimate is prepared by the local agency, which upgrades the preliminary estimate by using actual bid amounts rather than estimates. For more information on detail estimates, refer to Chapter 15. *Advertise and Award*, of this manual.

## NONPARTICIPATING WORK

On all federal-aid construction projects, work which is not within the limits of the project must be segregated under a category called "Not Part of Federal Project" for purposes of the preliminary and detail estimates (work funded by others is most generally nonparticipating).

Work within the federal-aid project limits, but ineligible for federal funding, is referred to as "nonparticipating work." Items considered "nonparticipating work" include but are not limited to the following:

- Betterment work such as capital outlay, safety improvements, or operational improvements that goes beyond restoring a site to its original condition or to the current standard (for emergency relief work)
- Right of way obligations when right of way is nonparticipating
- Maintenance related activities
- Spare parts not incorporated in the work



The above work must also be identified and segregated for the purposes of the preliminary and detail estimates.

Quantities for each structure shall be shown separately with an appropriate structure code. Miscellaneous work, such as utility adjustments by a utility company, shall also be separate.

## CONTRACT ITEMS

In order to determine which contract items should be included in the preliminary estimate, the work is broken down into the basic types of construction, such as excavation, concrete and steel. Each type and each classification of a type of construction comprises one bid item. Each contract item must be measured accurately. After September 30, 1996, metric units shall be used for all items of work for projects on the SHS. For projects off the SHS, the local agency has the option of using English or metric units until October 30, 2000. However, the local agency must use metric units if the local agency project uses Caltrans' contract documents (*Standard Plans*, *Standard Specifications*, etc.) or when it is requested that Caltrans review the structure portion of a project.

When practical, work performed by a different subcontractor should also be segregated into separate contract items.

The list of contract items should be analyzed to be sure that all phases of the work are included in the estimate. Care should also be taken to ensure that there is no overlap of contract items, which could result in a duplication of payments.

The *Coded Contract Item List* published by Caltrans may be used by the local agency with or without the item code number. The contract item list should be used if the local agency is using Caltrans *Standard Specifications* as the item descriptions are matched with the specifications.

## LOCAL AGENCY FURNISHED MATERIALS

Local agency furnished materials are a part of the total cost of the project and should be subtotaled and included in the total project cost.

To be eligible for federal participation, any material (other than local natural material) purchased by the local agency and furnished to the contractor for mandatory use in the project must be acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The unit cost eligible for federal participation is limited to the unit cost of such material to the local agency.

## SUPPLEMENTAL WORK

“Supplemental work” is work that is anticipated and required but cannot be described and quantified for delivery on a unit-price or lump sum basis.

Such work must be included in the project estimates and should follow the “Subtotal Contract Items.” Supplemental work should include extra work, additional work, right of way obligations, traffic control (if required) or other work to be performed by the contractor and charged to the contract work order. Supplemental work can be listed and included in the total project cost, as a separate line item, or included in the contingencies section of the preliminary estimate. Supplemental work must be included in the contingencies of the Detail Estimate (see Exhibit 15-M).

For additional information on the use of supplemental work as an item of work, refer to the Caltrans *PS&E Guide*, available from the Caltrans Publications Distribution Unit.

## CONTINGENCIES

Estimates may include contingencies, including supplemental work, of five to ten percent of the total estimate. Contingency amounts should be adjusted to give the total contract a round number. If there is a large amount of supplemental work, ten percent may be exceeded, but contingencies should always be at least five percent.

## CONSTRUCTION ENGINEERING

The Code of Federal Regulations defines construction engineering as the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Construction engineering costs should be shown on the Estimate, if federal reimbursement is desired.

Federal participation in construction engineering is generally limited to 15 percent of the federal participating construction costs. However, for the HBRR, HES, and other programs, the Division of Local Assistance (DLA) may approve request for reimbursement of construction engineering costs in excess of 15%.

## FEDERAL TRAINEE PROGRAM

Estimates for federal-aid projects may include an estimated amount for the federal Trainee Program. It is up to the local agency to establish the number of trainees for each project. For additional information on the Federal Trainee Program refer to the “Other Required Contract Provisions” section of this chapter.

## ESTIMATES FOR FORCE ACCOUNT (DAY LABOR)

If force account work (day labor) is to be included in the project, it must be listed in the estimate as a separate item. Such work must be justified and documented as described in Section 12.4 of this chapter.

## 12.14 OPTIONAL BRIDGE REVIEW

When a bridge or major structure is involved, the local agency may request a cursory review of the structural designs by Caltrans Division of Structures, Local Assistance. Caltrans' review and comments will be advisory only. If requested, Caltrans' decision to review structural plans will be based on:

- Experience of local agency staff
- Complexity of project, type of structure
- Availability of Caltrans staff

If the local agency requests a cursory review, they must submit checked plans to Caltrans Division of Structures. The checker's signature or initials must appear on each sheet of the structure plans. Unsigned plans will be returned to the local agency. The project special provisions and engineering reports must have the engineer's stamp, signature and registration number on the title sheet.

For major federal-aid construction projects on the NHS, involving a bridge or major structure, the bridge review shall be in accordance with PS&E procedures described in Section 12.2 of this chapter.

When transmitting the project documents to the Division of Structures for review, the local agency must identify the following:

- Agency advertising the project
- Estimated advertising date
- Type of funding
- Expenditure authorization number on State-advertised projects

When structure design documents are to be reviewed by Caltrans, the following number of copies as appropriate, are to be submitted to the Division of Structures. These figures represent the minimum number of copies required.

Document Submitted	Number Required
Plans (reduced or full size prints) .....	3
Special provisions (for bridge portion) .....	3
Hydraulic report .....	2
Foundation report .....	2

## 12.15 PS&E CERTIFICATION

Local agencies must certify their PS&E. A PS&E Checklist that identifies the critical federal requirements is provided to assist the local agency. The local agency must submit the local agency PS&E Certification, the PS&E Checklist, along with the PS&E package to the Caltrans DLAE when making their "Request for Authorization" to proceed with construction.

The “PS&E Certification” (Exhibit 12-C) must be signed by the local agency engineer in charge of the project. This person must be a professional civil engineer registered to practice in California and either a public employee or consultant on retainer as the City/County Engineer.

In the certification, the local agency certifies that the PS&E has been prepared in accordance with this chapter and that any necessary design exceptions have been approved by the Public Works Director or his/her designee. The certification must also acknowledge that review of PS&E will not be performed by Caltrans. By this certification, the local agency accepts responsibility for compliance with applicable design standards, Title 23 of the United States Code, and other applicable federal requirements (DBE, EEO, federal and state wage rates, license requirements, etc.). Failure to comply with any of these requirements may cause withdrawal of funds.

## PS&E CHECKLIST

Local agencies will complete the “PS&E Checklist” (Exhibit 12-D) and attach it to all PS&E Certification Letters submitted to the DLAE. The checklist has been developed to address the flexibility allowed under federal regulations and still ensure that the minimum required provisions are included in each set of contract documents. For instance, some provisions included in FHWA Form 1273 may not apply to some projects. This will depend on estimated cost, functional classification of the road, and whether the project is on the National Highway System (NHS). However, if any of the required provisions are left out of a construction contract, the project will not be eligible for federal reimbursement.

“PS&E Checklist Instructions” (Exhibit 12-E) are included in order to lead the local agency through the checklist and determine which of the various federal contract provisions are required. Samples of each required federal contract provision are attached. These samples are based on Caltrans *Standard Specifications*, however, the local agency may use equivalent provisions based on other standard specifications as long as the intent of the federal requirement is met.

## CHECKLIST REVIEW BY CALTRANS

The DLAEs will review each checklist to ensure that the local agency has completed the form in accordance with the instructions in this manual. Except as discussed below, this review will be limited to the actual checklist and will not involve a review of the PS&E package.

## SPECIAL PROVISIONS REVIEW BY CALTRANS

The DLAE has the responsibility to confirm that the correct Special and Federal Contract Provisions are included in the contract provisions as indicated on the checklist. The DLAE should ensure that at least one set of Special and Federal Contract Provisions is reviewed per year for each local agency that submits a PS&E. Also, the DLAE will decide if additional documents will be reviewed based on past experience with the agency, the number of federal-aid projects the agency has done since the reengineering of Local Assistance Procedures, and the amount of resources the district can direct to this effort. Local agencies requesting reviews will be accommodated to the extent that resources are available.

The checklist has been designed to facilitate this review by providing space for the local agency to indicate the page numbers of the appropriate federal provisions. This review will help the local agencies become familiar with the use of the checklist and the corresponding federal contract provisions. It will not, however, relieve the local agency of responsibility for compliance with all federal requirements.

## **DLAE ACCEPTANCE OF THE CHECKLIST**

The DLAE will indicate acceptance of the checklist by checking the type of review (i.e., whether the checklist review included a review of the special provisions) and signing the form. The local agency's "Request for Authorization" for the construction phase of a project will not be forwarded to the Division of Local Assistance (DLA) for approval prior to acceptance by the DLAE.

## **SUBMITTAL OF PLANS, SPECIFICATIONS AND ESTIMATE (PS&E)**

As a minimum, local agencies will submit the contract special provisions and the preliminary estimate with the PS&E Certification Letter. At the discretion of the DLAE, a set of plans will be also required. The plan requirement may be waived based on past experience with the agency and the number of federal-aid projects the agency has completed previously. As soon as the project is advertised, the local agency shall furnish the DLAE one copy of the "as advertised" plans and special provisions or two copies if structures (bridges) are involved.

## **PROCESS REVIEW**

Process reviews of a random sample of the local agency PS&E packages will be conducted as needed. The process reviews will be conducted on a "post audit" basis.

Local agencies should be aware that if deficiencies are found during a process review, it may be too late to make corrections and the loss of all or a portion of the project federal funding will result.

## **12.16 PROJECTS WITHOUT TRADITIONAL PS&E**

Some projects, on or off the NHS, such as Congestion Mitigation and Air Quality (CMAQ) and Transportation Enhancement (TE) may consist of studies and other nonconstruction type projects. Examples include: Traffic Demand Management (TDM) studies relating to regional air quality, ride sharing, commuter incentives and commuter computer centers.

These projects will not have a set of plans or PS&E, but may only consist of a consultant contract agreement. The local agency shall submit the following to DLAE (see Exhibit 12-B *Scope of Work-CMAQ/TE Projects* in this chapter):

- Work plan
- Budget, with schedule
- Consultant agreement
- "Request for Authorization" form (prior to consultant approval)

Unlike the traditional PS&E, these studies are submitted for preliminary engineering, only. The project work plan, budget, and consultant agreement are submitted in lieu of PS&E and a detailed estimate. If the project is part of a regional study done by a Metropolitan Planning Organization (MPO), then the local federal-aid portion of the work plan must be segregated to show the project costs associated with each local agency.

## 12.17 REFERENCES

- |                              |   |
|------------------------------|---|
| The Civil Rights Act of 1964 | 23 CFR 230.111  |
| ISTEA Section 1041(a)        | 23 CFR 627.1  |
| ISTEA Section 1048(a)        | 23 CFR 627.3  |
| STAA Section 165             | 23 CFR 627.5  |
| 23 USC 106(b)(2)             | 23 CFR 630.1010(a)(2)   |
| 23 USC 112                   | 23 CFR 633  |
| 23 USC 113                   | 23 CFR 771.113  |
| 23 USC 114                   | 28 CFR 35   |
| 23 USC 140                   | 29 CFR 1,3,5  |
| 23 USC 140(b)                | 29 CFR 1630   |
| 23 USC 315                   | 29 CFR 1926   |
| 23 USC 324                   | 41 CFR 60   |
| 40 USC 276 (a) Davis-Bacon & | 48 CFR 31   |
| (c) Copeland Act             | 49 CFR 1.48   |
| 40 USC 333                   | 49 CFR 20   |
| 23 CFR 200                   | 49 CFR 21   |
| 23 CFR 230                   | 49 CFR 23   |
| 23 CFR 230 A&D               | Section 6730-6749 California<br>Business and Professions Code |
- Presidential Executive Order 13202 "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects" dated February 17, 2001 (Federal Register: February 22, 2001; Volume 66, Number 36, Presidential Documents, Pages 11225-11226)
- Presidential Executive Order 13208 "Amendment to Executive Order 13202 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," dated April 6, 2001 (Federal Register: April 11, 2001; Volume 66, Number 71, Presidential Documents, Pages 18717-18718)
- Caltrans Memorandum to "All District Directors" dated June 12, 2000; Subject: Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions
- Stewardship Agreement known as "Project Approval and Oversight" between FHWA and Caltrans, dated December 2002
- [http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p/p09crdbe.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p09crdbe.pdf)
- <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>
- <http://www.ada.gov/stdspdf.htm>
- [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/28cfr35\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfr35_04.html)

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**SCOPE OF WORK - CMAQ/ TE Projects****BASIC ELEMENTS**

The scope of work should be one page long and include:

- project description
- major objectives
- project locations
- project components
- project milestones
- special conditions
- target populations

**PROJECT MILESTONES**

Provide all completion dates and deliverables including:

- quarterly progress reports
- final report
- marketing plans
- Request for Proposal (RFP)
- notice of completion
- equipment procurement & purchase
- beginning of operation

**PROPOSED BUDGET**

Provide a budget and work plan with costs that include:

- capital costs
- non-capital costs
- donations
- all private & public \$
- administrative costs
- line items for marketing, training, and data collection
- work plan costs by task

SAMPLE WORK PLAN FOR A TRAFFIC DEMAND CENTER (shows all tasks and associated costs)

TASK DESCRIPTION	COST	SCHEDULE	
		Start Date	Completion Date
A Building Space	\$45,000		
B Telephones	\$75,000		
C Cabling and Wiring	\$12,000		
D Communications	\$30,000		
E Security	\$16,000		
F Furniture	\$60,000		
G Hardware	\$17,000		
H Software	\$85,000		
I Teleconferencing	\$90,000		
J Marketing	\$32,000		
K Administration	\$30,000		
L Project operations	\$60,000		
M Evaluations	\$10,000		
<b>TOTAL</b>	<b>\$562,000</b>		

SAMPLE BUDGET FOR A TRAFFIC DEMAND CENTER (shows all fund sources and private contributions)

CAPITAL COSTS	Local	Private	MPO	Measure	Total
Equipment	\$177,000	\$ 70,000	\$42,000	\$40,000	\$329,000
Lease		\$ 45,000			\$ 45,000
Construction				\$28,000	\$ 28,000
Subtotal					\$402,000
<b>NON-CAPITAL COSTS</b>					
Construction Engineering				\$30,000	\$ 30,000
Design	\$ 10,000				\$ 10,000
Administration			\$30,000		\$ 30,000
K Operations		\$ 60,000			\$ 60,000
L Project Implementation	\$ 30,000				\$ 30,000
<b>TOTAL COSTS</b>	<b>\$217,000</b>	<b>\$175,000</b>	<b>\$72,000</b>	<b>\$98,000</b>	<b>\$562,000</b>

Rev.05/27/05

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## PS&E CERTIFICATION

***Local Agency Letterhead***

**To:** *(District Local Assistance Engineer's name)* *(Federal Number)*  
District Local Assistance Engineer *(Project Description)*  
Caltrans, Office of Local Assistance  
*(District Address)*

Dear (***District Local Assistance Engineer's name***):

With submission of the attached PS&E CHECKLIST for the above subject project, I hereby certify that the project was designed and prepared for advertisement in accordance with the *Local Assistance Procedures Manual* produced by the California Department of Transportation (Caltrans).

I understand Caltrans may not be performing a review of this PS&E at this time but that all documents relating to this project are subject to review by the Federal Highway Administration (FHWA) and/or Caltrans in order to verify this PS&E certification. I also understand if deficiencies are found in subsequent review the following actions will be considered:

- (1) Where minor deficiencies are found, PS&E certification for future projects may be conditioned or not accepted until the deficiencies are corrected.
- (2) Where deficiencies are of such magnitude as to create doubt that the policies and objectives of Title 23 of the United States Code (or other applicable federal and State laws) will not be accomplished by the project, federal funding may be withdrawn.

(Signature, Title)

(*Local Agency*)

Professional Registration Number:

Expiration Date:

Attachment

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**PS&E CHECKLIST**

Agency \_\_\_\_\_

Federal Project No. \_\_\_\_\_

This form is to be completed by the local agency and attached to the PS&E Certification. See Exhibit 12-E for instructions and the referenced attachments.

**I. HIGHWAY SYSTEM**

- ☐ On the National Highway System (NHS)  
☐ Off the NHS

**II. FUNCTIONAL CLASSIFICATION** (Check as many as appropriate)On the Federal-aid System

- |   |   |
|---|---|
| <input type="checkbox"/> Urban Principal Arterial - Fwy or Expwys | <input type="checkbox"/> Rural Principal Arterial |
| <input type="checkbox"/> Urban Principal Arterial - Other         | <input type="checkbox"/> Rural Minor Arterial     |
| <input type="checkbox"/> Urban Minor Arterial                     | <input type="checkbox"/> Rural Major Collector    |
| <input type="checkbox"/> Urban Collector                          |   |

Off the Federal-aid System

- |                                      |  |
|--------------------------------------|--|
| <input type="checkbox"/> Urban Local | <input type="checkbox"/> Rural Minor Collector |
|                                      | <input type="checkbox"/> Rural Local           |

**III. TYPE OF CONSTRUCTION** (Check appropriate box)

- ☐ New or Reconstruction  
☐ Resurfacing, Restoration and Rehabilitation (3R)  
☐ Preventive Maintenance

**IV. METHOD OF CONSTRUCTION****A. Contracting Method** (Check appropriate box)

- ☐ Competitive bidding  
☐ Other than competitive bidding

(If the contracting method is other than competitive bidding, check appropriate box below.)

- ☐ The project is State-Authorized. A Public Interest Finding is on file in the contract records justifying the method.
- ☐ The project is subject to FHWA Full Oversight. A Public Interest Finding justifying the method has been submitted and approved by Caltrans and FHWA.

**B. Force Account (Day Labor)** (Check appropriate box)

- ☐ The entire work will be constructed by contract as indicated above.
- ☐ Some work (incidental to the main purpose of the project) will be constructed by Force Account. A Public Interest Finding is on file in the contract records justifying the work.
- ☐ The entire project will be constructed by Force Account (Day Labor).

(If the entire project will be constructed by Force Account (Day Labor)

- ☐ The project is State-Authorized and not subject to FHWA oversight. A Public Interest Finding is on file in the contract records justifying the work.
- ☐ The project is subject to FHWA Full Oversight. A Public Interest Finding justifying the method has been submitted and approved by Caltrans and FHWA.

**V. ENVIRONMENTAL ANALYSIS** (Check box if requirement is met)

- ☐ The PS&E is fully responsive to the necessary actions called for by the environmental document, permit conditions and other agreements.

**VI. VALUE ENGINEERING (VE) ANALYSIS** (Check appropriate box if the project is on the NHS)

- ☐ VE analysis been performed on this project and a copy of the analysis has been forwarded to the Caltrans District Value Analysis Coordinator).
- ☐ VE analysis has not been performed; the estimated project cost is <\$25 million, or < \$20 million for bridge projects.

**VII. GEOMETRIC DESIGN STANDARDS** (Complete this section if project changes existing geometrics)

**A. Geometric Design Standards Used** (Check appropriate box)

- ☐ Caltrans Design Standards (on State Highway System)
- ☐ Current AASHTO Standards
- ☐ 3R Projects - Minimum Standards for Geometric Design of Federal-Aid Resurfacing, Restoration, and Rehabilitation Projects on Local Streets and Roads, *Local Assistance Procedures Manual*, State of California Department of Transportation.
- ☐ Local Agency Design Standards                      Date approved \_\_\_\_\_

**B. Deviations from Controlling Criteria** (check appropriate box for each controlling criteria)

Criteria Met	Design Criteria Not Met	Design Exception Approval Date	Controlling Criteria
<input type="checkbox"/>	<input type="checkbox"/>	_____	Design Speed
<input type="checkbox"/>	<input type="checkbox"/>	_____	Lane Width
<input type="checkbox"/>	<input type="checkbox"/>	_____	Shoulder Width
<input type="checkbox"/>	<input type="checkbox"/>	_____	Bridge Width
<input type="checkbox"/>	<input type="checkbox"/>	_____	Horizontal Alignment
<input type="checkbox"/>	<input type="checkbox"/>	_____	Vertical Alignment
<input type="checkbox"/>	<input type="checkbox"/>	_____	Grades
<input type="checkbox"/>	<input type="checkbox"/>	_____	Stopping Sight Distance
<input type="checkbox"/>	<input type="checkbox"/>	_____	Cross Slopes
<input type="checkbox"/>	<input type="checkbox"/>	_____	Super elevation
<input type="checkbox"/>	<input type="checkbox"/>	_____	Horizontal Clearance
<input type="checkbox"/>	<input type="checkbox"/>	_____	Vertical Clearance

**VIII. BRIDGE DESIGN PROCEDURES** (Check the appropriate box)

All bridges have been designed in accordance with the current edition of the Caltrans *Bridge Design Specifications Manual*

YESDOES NOT APPLY (Bridge construction not included in the project)☐☐**IX. STANDARD PLANS** (Check appropriate box)☐Caltrans *Standard Plans*☐*Standard Plans for Public Works Construction*☐

Local Approved Standard Plans:

\_\_\_\_\_ Date signed (on behalf of the local agency) by a person in responsible charge and who is registered professional engineer licensed to practice in the State of California.

**X. PROJECT PLANS AND SPECIFICATIONS** (Check box if requirements met)☐

Cover sheet of plans and specifications signed and stamped on behalf of the local agency by the person in responsible charge, and who is a registered professional engineer licensed to practice in the State of California.

☐

Traffic Control Plans or reference to Standard Plan and Signs/Striping Plans Included (Note: Additionally, Traffic Management Plans are required to be on file for all reconstruction, rehabilitation, and other projects [including projects on the State Highway System not funded by the state], if significant traffic delays are anticipated and as a result from project activities).

☐

Erosion Control Plan

☐

ADA is being fully complied with including *Federal ADA Standards for Accessible Guidelines for Buildings and Facilities* (ADAAG), *Title 24 of the California Code of Regulations*, and local codes.

**XI. STANDARD SPECIFICATIONS** (Check Standards used)☐Caltrans *Standard Specifications*☐*Standard Specifications for Public Works Construction* (Green Book)☐

Locally Approved Standard Specifications

**XII. REQUIRED FEDERAL CONTRACT PROVISIONS****A. General Federal Requirements** (Check appropriate box and indicate page number)

Page No.

☐

Caltrans SSP - *SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS* (Attachment A, FR-1 & FR-2) is included. ....

☐

Equivalent provisions are included. ....

**B. FHWA Form 1273****1. Incorporation of FHWA Form 1273 into Contract** (Check appropriate box and indicate page number)

Page No.

☐

An unmodified copy of FHWA Form 1273 *REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS*

(Attachment B, FR-3 thru FR-14) has been physically incorporated into this contract .....

☐

A modified copy of FHWA Form 1273 *REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS* has been physically incorporated into this contract .....

2. **Modification of FHWA Form 1273** (If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections 2.a thru 2.d.)

Estimated Construction Contract Cost \_\_\_\_\_

**a. Section IV. Payment of Predetermined Wages** (Check appropriate box)

This section applies to all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or may be specified elsewhere in the contract that it does not apply.

- ☐ Section IV has not been modified.  
☐ Section IV has been *crossed out/removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

**b. Section V. Statements and Payrolls** (Check appropriate box)

This section applies to all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or may be specified elsewhere in the contract that it does not apply.

- ☐ Section V has not been modified.  
☐ Section V has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

**c. Section VI. Record of Materials, Supplies, and Labor** (Check appropriate box)

This section applies to all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or may be specified elsewhere in the contract that it does not apply.

- ☐ Section VI has not been modified.  
☐ Section VI has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).

**d. Section VII. Subletting or Assigning the Contract** (Check appropriate box)

This section applies to all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or may be specified elsewhere in the contract that it does not apply.

- ☐ Section VII has not been modified.  
☐ Section VII has been *crossed out/ removed/ specified elsewhere in the contract that it does not apply* (indicate type of modification).



**C. Certification/Disclosure Forms** (Check if included and indicate page number)**Page No.**

- ☐ *EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Exhibit 12-E, Attachment C) \_\_\_\_\_
- ☐ *NONCOLLUSION AFFIDAVIT* (Exhibit 12-E, Attachment D) ..... \_\_\_\_\_
- ☐ *DEBARMENT AND SUSPENSION CERTIFICATION* (Exhibit 12-E, Attachment E) ..... \_\_\_\_\_
- ☐ *NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS*  
(Exhibit 12-E, Attachment F) ..... \_\_\_\_\_
- ☐ *DISCLOSURE OF LOBBYING ACTIVITIES* (Exhibit 12-E, Attachment G) ..... \_\_\_\_\_
- ☐ 2-1.015—*FEDERAL LOBBYING RESTRICTIONS* (Exhibit 12-E, Attachment H) ..... \_\_\_\_\_
- ☐ Equivalent provisions (Attach complete listing, including page numbers)

**D. Liquidated Damages** (Check appropriate box and indicate page number)**Page No.**

- ☐ Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit 12-E, Attachment I) is included in this contract..... \_\_\_\_\_
- ☐ Equivalent provisions are included. .... \_\_\_\_\_

**E. Disadvantaged Business Enterprise (DBE)/Subcontracting**

- A. Local Agency "Annual Anticipated DBE Participation Level (AADPL)(the AADPL percentage comprising all contracts) \_\_\_\_\_

Example:

Local Agency Annual Anticipated DBE Participation Level is 10% (comprised of this contract's availability advisory of 5% and another contract's availability advisory of 15% assuming two contracts of equal value)

- B. This Specific Contract DBE Availability Advisory Percentage \_\_\_\_\_

- ☐ This contract has a specific DBE availability advisory percentage to meet the intent of the Caltrans DBE Program Plan and the local agency's Annual Anticipated DBE Participation Level.
- ☐ This contract has no specific DBE availability advisory percentage, as it has been determined that one is not appropriate.

For use with all Federal-aid contracts. (Check if included and indicate page number)

**a. The following applicable Caltrans Standard Special Provisions (SSPs) to the Caltrans Standard Specifications or their equivalent are included in the contract Special Provisions with page numbers noted (editing may be required)**

..... Page No.

☐ 2-1.01 GENERAL Required Listing of Proposed Subcontractors and Required Contract Assurance Statement (Exhibit 12-E, Attachment H) or *Equivalent Provisions* \_\_\_\_\_

☐ LISTING OF SUBCONTRACTORS (Form in Sample Proposal and Contract) or *Equivalent Form* \_\_\_\_\_

☐ 2-1.015 Federal Lobbying Restrictions (Has been included) or *Equivalent Provisions* \_\_\_\_\_

☐ 2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE) (Exhibit 12E, Attachment H) or *Equivalent Provisions* \_\_\_\_\_

☐ 2-1.03 DBE AVAILABILITY ADVISORY (Has been included)  
Either \_\_\_\_\_

☐ 2.a Used for Federal-Aid projects with a DBE availability advisory percentage or \_\_\_\_\_

☐ 2.b Use for Federal-Aid projects without a DBE availability advisory percentage \_\_\_\_\_

☐ 3- AWARD AND EXECUTION OF CONTRACT (Exhibit 12-E, Attachment I) or *Equivalent Provisions* \_\_\_\_\_

☐ Caltrans SSP 5-1.- SUBCONTRACTOR AND DBE RECORDS (Exhibit 12-E, Attachment J) or *Equivalent Provisions* \_\_\_\_\_

☐ Caltrans SSP 5-1.- DBE CERTIFICATION STATUS CHANGE (Exhibit 17-O) or *Equivalent Provisions* \_\_\_\_\_

☐ Caltrans SSP 5-1.- PERFORMANCE OF SUBCONTRACTORS (Exhibit 12-E, Attachment K) or *Equivalent Provisions* \_\_\_\_\_

☐ Caltrans SSP 5-1. SUBCONTRACTING (Exhibit 12-E, Attachment L) or *Equivalent Provisions* \_\_\_\_\_

☐ Caltrans SSP 5-1. PROMPT PROGRESS PAYMENTS TO SUBCONTRACTORS or *Equivalent Provisions* \_\_\_\_\_

☐ Caltrans SSP 5-1. PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS. or *Equivalent Provisions* \_\_\_\_\_

**b. The following forms are applicable with the above SSP's.**

- ☐ LOCAL AGENCY BIDDER-DBE INFORMATION Form (Exhibit 15-G) or  
*Equivalent Provisions* ..... \_\_\_\_\_
- ☐ FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES (Exhibit 17-F) or *Equivalent Provisions*..... \_\_\_\_\_

**F. Buy America Specification** (Check appropriate box and indicate page number if requirement applies. See Section 12.9 of the *Local Assistance Procedures Manual* for requirement.)**Page No.**

- ☐ Caltrans SSP 5-1- BUY AMERICA REQUIREMENTS (Exhibit 12-E, Attachment M)..... \_\_\_\_\_
- ☐ Equivalent provisions are included. .... \_\_\_\_\_
- ☐ Buy America specifications are not included in contract.
- ☐ Waiver for the following has been approved by FHWA: \_\_\_\_\_ Date \_\_\_\_\_.

**G. Federal Trainees** (Check appropriate box and indicate page number if requirement applies)

- ☐ The project has less than 100 working days. A Federal Trainee goal and special provisions are not required.
- ☐ Analysis of the Engineers Estimate has the dollar value under \$200,000. A Federal Trainee goal and special provisions are not required.

**Page No.**

- ☐ Caltrans SSP - *FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS*  
(Exhibit 12-E, Attachment N, FR-15 and FR-16) are included. (The Trainee goal is \_\_\_\_\_.) ..... \_\_\_\_\_
- ☐ Equivalent provisions are included (The Trainee goal is \_\_\_\_\_.)..... \_\_\_\_\_

**H. Federal Wage Rates** (Check appropriate box and indicate page number if Federal Wages Rates are included)**Page No.**

- ☐ Federal Wages Rates are physically incorporated in this contract. .... \_\_\_\_\_  
**Note: By checking the above box, the local agency is indicating that they are aware of the Federal-aid "10-day rule" requirement.**
- ☐ This project is not located on a Federal-aid Route. Federal Wage Rates are not required.

**I. Relations with Railroad** (Check appropriate box and indicate page number if special provisions are included)**Page No.**

- ☐ The required provisions are included. .... \_\_\_\_\_
- ☐ This project does not involve the use of railroad properties or adjustments to railroad facilities.

**XIII. RESTRICTED CONTRACT PROVISIONS (CHECK APPROPRIATE BOX)**

**A. Indian Preferences** (Check appropriate box and provide required information)

- ☐ Not included
- ☐ Included. The project is on or near the \_\_\_\_\_ Indian Reservation.

**B. Bonding and Prequalification** (Check box if requirement met)

- ☐ Bonding or prequalification, if required, will not be used to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State of California.

**C. Price Adjustment Clauses** (Check appropriate box)

- ☐ Price adjustment clauses are not included.
- ☐ Price adjustment clauses are included. The federal conditions restricting the use of these clauses have been met and are documented in the project files

**D. Warranty Clauses** (Complete this section if project is on the NHS)

- ☐ Warranty Clauses are not included.
- ☐ Warranty Clauses are included. Documentation of the required conditions on the use of these clauses is in the project files.

**E. Proprietary Items** (Complete this section if project is on the NHS)

- ☐ Proprietary Items are not included.
- ☐ Proprietary Items are included. A Public Interest Finding justifying the use has been approved and is documented in the project files.

**XIV. MATERIALS & EQUIPMENT** (Check appropriate box)

**A. Publicly Owned Equipment (for use by Contractor)** (Check appropriate box)

- ☐ Not included
- ☐ Included. A Public Interest Finding justifying this use is in project files and the project specifications meet the requirements for federal participation listed in Chapter 12.

**B. Equipment Purchases for Local Ownership** (Check appropriate box)

- ☐ Not included
- ☐ Included. Amount charged to construction engineering will be limited to amortized equipment cost (over its useful life) attributable to the time the equipment is used on the project.

**C. Convict Produced Materials**

- ☐ Not included
- ☐ Included. The conditions placed on the use of these materials by the contractor meet federal requirements and are included in the contract specifications.

**D. Local Agency Furnished Materials** (Check appropriate box)

- ☐ Local Agency Furnished Materials are not included.

(If Local Agency Furnished Materials are included check appropriate box.)

- ☐ Local Agency Furnished Materials have been acquired on the basis of competitive bidding.
- ☐ A Public Interest Finding is on file in the contract records justifying another method of acquisition.

**XV. PRELIMINARY ESTIMATE** (Check boxes if requirements met)

- ☐ Exhibit 12-A, or equivalent has been completed and is attached.
- ☐ The estimate is broken down into items sufficient in detail to provide an initial prediction of the financial obligation to be incurred by the local agency, state and FHWA and to permit an effective review and comparison of the bids received.
- ☐ Non-participating items of work have been identified and segregated from the estimated cost of work eligible for federal-aid.

(If project is funded with more than one type of federal-aid, check box if requirement met.)

- ☐ The estimate has been segregated by fund types for use in preparing the "Request for Authorization for Construction" (Detail Record) and the Finance Letter.

**XVI. LOCAL AGENCY SIGNATURE**

This Federal Contract Provisions checklist has been prepared in accordance with Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**XVII. CALTRANS ACCEPTANCE:**

Check appropriate acceptance statement:

- ☐ I have not personally inspected the subject project PS&E package but I am aware of the scope of the project. I have reviewed this "PS&E CHECKLIST" and agree it is complete and appears to have been prepared in accordance Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*.
- ☐ I have inspected the specifications portion of the subject project PS&E package and I am aware of the scope of the project. I have reviewed this "PS&E CHECKLIST" and agree it is complete and appears to have been prepared in accordance with Chapter 12 "PS&E" of the *Local Assistance Procedures Manual*. I have also verified that the indicated Required Federal Contract Provisions are included in the specifications.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:

- Original with PS&E Certification - DLAE
- Original "Accepted" copy with PS&E Certification - DLAE file
- One "Accepted" copy to be returned to local agency

## PS&E CHECKLIST INSTRUCTIONS

The PS&E Checklist is to be completed by the local agency in accordance with the following instructions and attached to the PS&E Certification.

### I. HIGHWAY SYSTEM

Some PS&E requirements depend on whether the project is on or off the National Highway System (NHS). See *Local Assistance Program Guidelines* (LAPG) Chapter 3, *Federal-Aid Routes and Functional Classifications*, for a listing of the local agency NHS routes.

Check the appropriate box indicating on which system the project is located.

### II. FUNCTIONAL CLASSIFICATION

Federal-aid eligibility, design standards as well as some PS&E requirements depend on the functional classification of the route the project is on. See LAPG, Chapter 3, *Federal-Aid Routes and Functional Classifications*, for a discussion of the functional classification system.

Check the appropriate box

### III. TYPE OF CONSTRUCTION

Design standards as well as some oversight responsibilities depend on the type of construction. See Chapter 2 of this manual for definitions and check the appropriate box.

### IV. METHOD OF CONSTRUCTION

#### A. CONTRACTING METHOD

Unless justified by a Public Interest Finding (Exhibit 12-F in this chapter), all federal-aid construction contracts must be awarded to the lowest responsible bidder of a competitive bid process. For State-Authorized projects that are not subject to FHWA Full Oversight, the local agency may approve the Public Interest Finding if it meets the conditions described in Chapter 12. Caltrans and FHWA must approve the Public Interest Finding for projects that are subject to FHWA Full Oversight before accepting the local agency's PS&E Certification.

Check the appropriate box.

#### B. FORCE ACCOUNT (DAY LABOR)

A Public Interest Finding (Exhibit 12-F in this chapter) must justify any force account construction work performed by the local agency. When the entire project will be constructed by the local agency, and the project is subject to Full Oversight by Federal Highway Administration (FHWA), the Public Interest Finding shall be submitted to District Local Assistance Engineer (DLAE) for Caltrans and FHWA approval before accepting the local agency's PS&E Certification. The Public Interest Finding will be approved by the local agency for all other force account (day labor) work.

Check the appropriate boxes and process the Public Interest Finding as required.

## V. ENVIRONMENTAL ANALYSIS

The preparation of PS&E must reflect findings of the environmental analysis performed for the project. By checking the box, the agency certifies that the necessary actions called for by the environmental documents have been responded to in the PS&E. Failure to check the box will result in denial of the Request for Authorization.

## VI. VALUES ENGINEERING (VE) ANALYSIS

The application of values engineering (VE) is required for all federal-aid highway project on the NHS with an estimated cost of \$25 million or more. If the project is on the NHS, check appropriate box.

## VII. GEOMETRIC DESIGN STANDARDS

If the project does not change existing geometrics, Section A and B do not apply and the local agency is not required to check any boxes in these sections.

### A. GEOMETRIC DESIGN STANDARDS USED

New and reconstruction projects on the NHS shall be designed in accordance with Standards as defined in the current edition of *A Policy on Geometric Design of Highways and Streets*, published by the American Association of State Highway and Transportation Officials (AASHTO). The minimum standards for geometric design of local federal-aid resurfacing, restoration and rehabilitation (3R) projects on the NHS are shown in Tables 11-1 through 11-10 in Exhibit 11-A. Local geometric design standards that have been developed for use on locally funded new and reconstruction, or 3R projects off the NHS, may be used subject to the conditions listed in Chapter 11, *Design Standards*.

Check appropriate box if this section applies.

### B. DEVIATIONS FROM CONTROLLING CRITERIA

The controlling criteria listed are considered to be of primary importance for highway safety, and deviations require design exception approval procedures as described in Chapter 11, *Design Standards*. Check whether the criteria have been met on this project. If a design exception has been approved, indicate the approval date. Documentation shall be retained in the project files.

## VIII. BRIDGE DESIGN PROCEDURES

All bridges shall be designed in accordance with the current edition of the Caltrans *Bridge Design Specifications Manual*. Check if requirement met, or if the project does not include any bridge construction indicate requirement does not apply.

## IX. STANDARD PLANS

For projects off the State Highway System, the local agency may use Caltrans *Standard Plans*, *Standard Plans for Public Works Construction*, or subject to the conditions described in Chapter 11, *Locally approved Standard Plans*. Check appropriate box.



**X. PROJECT PLANS AND SPECIFICATIONS**

Project plans shall be signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects. Check boxes to indicate requirements are met. Failure to check both boxes will result in denial of the "Request for Authorization".

Erosion control plans may be required; see Section 12.7 *Plans*, in the *Local Assistance Procedures Manual* (LAPM). If required, check box.

Project plans and specifications may be required to meet the Americans with Disabilities Act (ADA) requirements under federal 28 CFR Part 35 or Part 36. Whenever applicable, project plans will need to comply with the federal 28 CFR Part 35 or Part 36, and the California and Local Building Codes within the project limits. In accordance, with 28 CFR Sec. 35.151, curbs ramps must meet current ADA standards if the project includes streets that are to be newly constructed or altered (includes repaving). For ADA requirements, see Chapter 11 *Design Standards*, and Section 12.7 of this chapter of LAPM. If ADA requirements apply and will be complied with, check box.

**XI. STANDARD SPECIFICATIONS**

For projects off the State Highway System, the local agency may use Caltrans *Standard Specifications*, the *Standard Specifications for Public Works Construction*, or subject to the conditions described in Chapter 11, *Locally approved Standard Specifications*. Check appropriate box.

**XII. REQUIRED FEDERAL CONTRACT PROVISIONS (SEE ATTACHMENTS A thru N, THIS EXHIBIT)****A. GENERAL FEDERAL REQUIREMENTS**

General provisions must be included to reference FHWA Form 1273, Performance of Previous Contract, Noncollusion Provision, and Participation by Minority Business Enterprises In Subcontracting. Caltrans SSP - *SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS* (Attachment A, pages FR-1 & FR-2) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

**B. FHWA FORM 1273****1. Incorporation of FHWA Form 1273 into Contract**

FHWA Form 1273- *REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS, (Exclusive of Appalachian Contracts)* (Attachment B, pages FR-3 thru FR-14) shall be made a part of, and physically incorporated into all contracts as well as appropriate subcontracts and purchase orders. The provisions contained in FHWA Form -1273 are generally applicable to all federal-aid construction projects. Except as described below, the form may not be modified.

Check the appropriate box, (i.e., unmodified or modified), and indicate page number.

**2. Modification of FHWA Form 1273**

If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections **2.a.** thru **2.d.**

**a. Section IV. Payment of Predetermined Wages**

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box, (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**b. Section V. Statements and Payrolls**

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box, (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**c. Section VI. Record of Materials, Supplies, and Labor**

This section applies to all federal-aid projects in excess of \$1 million, except for projects off the NHS. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**d. Section VII. Subletting or Assigning the Contract**

This section applies to all federal-aid projects except for projects off the NHS. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**C. CERTIFICATION/DISCLOSURE FORMS**

The following certification/disclosure forms shall be included in all federal-aid projects. Except for the Disclosure of Lobbying form and instructions, equivalent provisions may be used.

*EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Attachment C)

*NONCOLLUSION AFFIDAVIT* (Attachment D)

*DEBARMENT AND SUSPENSION CERTIFICATION* (Attachment E)

*NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS* (Attachment F)

*DISCLOSURE OF LOBBYING ACTIVITIES* (Attachment G)

Check appropriate box (i.e., Attachments or equivalents) and indicate page number.

**D. LIQUIDATED DAMAGES**

Provisions for liquidated damages shall be included in all federal-aid contracts on the NHS (see Chapter 12 *Plans, Specifications & Estimate*, of the *LAPM* for requirements.). Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit 12-E, Attachment I, also in *Sample Notice to Contractors & Special Provisions*) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

**E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Fill in the required project information before completing this section.

It is the policy of the FHWA that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Individual project availability advisory percentages will be established based on the criteria identified in the local agency's DBE Annual Submittal Form (Chapter 9, Exhibit 9-B). Complete evaluation documentation is required and shall be retained for each project (see DBE references in the *LAPM*).

In some cases, a specific availability advisory percentage may not be appropriate due to the extremely limited subcontracting opportunities for DBEs or the lack of certified DBEs in the geographic area in which work is to be performed.

For all federal-aid projects, Caltrans SSPs (and the referenced Caltrans *Standard Specifications*), or equivalent provisions, are required to describe DBE Program Policy, the contract goal, eligibility criteria, procedures for counting DBE participation, award documentation procedures, post award compliance procedures, and required records and reporting.

Caltrans SSP *SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS* (Exhibit 12-E, Attachment H, also in *Sample Notice to Contractors & Special Provisions*) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and DBE Availability Advisory for project.

Check appropriate boxes (i.e., Caltrans SSPs or equivalent provisions) and indicate page number. If equivalent provisions are used, attach a complete listing, including page numbers.

**F. BUY AMERICA SPECIFICATION**

Current Buy America regulations are discussed in Section 12.9 of the *LAPM*. Buy America requirements do not apply to minimal use of the material such that the cost, delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent of the contract amount, whichever is greater. (Attachment M)

If the Buy America requirement applies, check the appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number. If the requirement does not apply, check the last box.

**G. FEDERAL TRAINEES**

Chapter 12, *Plans, Specifications & Estimate*, of the *LAPM* includes information for On-the-Job Training. If a Federal Trainee goal is not required, check the appropriate box. If a goal is required, check appropriate box (i.e., Caltrans SSP or equivalent), indicate the trainee goal and the page number. (Attachment N)

**H. FEDERAL WAGE RATES**

If payment of federal predetermined wages are required per instructions in Section B.2.a, “Section IV. *Payment of Predetermined Wages*,” they shall be physically incorporated into the contract and in all related subcontracts

Check appropriate box (i.e., Federal Wages Rates are included or not required) and indicate page number if included.

By checking the box the local agency is indicating that they are aware of the federal-aid “10-day rule” for federal wage rates. See section 12.9 *Required Federal Contract Provisions – Federal Wage Rates* for local agency requirements under the “10-day rule.”

**I. RELATIONS WITH RAILROAD**

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company. The pertinent portions of the agreement applicable to any protective services required during performance of the work shall be included in the project specifications and special provisions.

Check appropriate box (i.e., provisions are included or not required). If provisions are included, indicate page number.

**XIII. RESTRICTED CONTRACT PROVISIONS**

Unless otherwise noted, see Section 12.10 of Chapter 12 for detailed guidance.

**A. INDIAN PREFERENCES**

Generally, local agencies may not use local hiring practices. However, ISTEA permits an Indian employment preference provision for projects on or near Indian reservations or Indian lands. Check the appropriate box.

**B. BONDING AND PREQUALIFICATION**

Bonding and prequalification procedures are not required for federal-aid projects. However, any procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall not be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of California. Check appropriate boxes and if bonding and/or prequalification are used check the last box to indicate the requirement will be met.

**C. PRICE ADJUSTMENT CLAUSES**

Price adjustment clauses may be implemented if certain conditions are met. If these clauses are used, the local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

**D. WARRANTY CLAUSES (COMPLETE THIS SECTION IF PROJECT IS ON THE NHS)**

Warranty clauses may be implemented if the conditions described in Section 12.12 of Chapter 12 are met. The local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

**E. PROPRIETARY ITEMS (COMPLETE THIS SECTION IF PROJECT IS ON THE NHS)**

The use of proprietary items is restricted as described in Section 12.12 in Chapter 12. If the use does not meet these restrictions, a Public Interest Finding justifying the use must be approved by the local agency and documented in the project files. Check the appropriate box.

**XIV. MATERIALS AND EQUIPMENT**

Unless otherwise noted, see Section 12.12 of Chapter 12 for details.

**A. Publicly Owned Equipment (for use by Contractor)**

The use of publicly owned equipment on a project going to bid must be justified with a Public Interest Finding. The local agency may approve the use provided it meets conditions described in Chapter 12. Check the appropriate box.

**B. Equipment Purchases for Local Ownership**

The cost of equipment purchased by the local agency or by the contractor with ownership transferred to the local agency for construction engineering is limited. Check the appropriate box.

**C. Convict Produced Materials**

Materials produced by convict labor may be used on any federal-aid project if they meet certain conditions. Check appropriate box.

**D. Local Agency Furnished Materials**

The use of local agency furnished materials not acquired on the basis of competitive bidding must be supported by a Public Interest Finding justifying the use (see Section 12.13 of Chapter 12). The justification must be approved by the local agency and documented in the project files. If these materials are included, check the appropriate box indicating the method of acquisition.

**XV. PRELIMINARY ESTIMATE**

An estimate of the contract items of work must be prepared in a format which describes the items of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total. (Exhibit 12-A, or equivalent). The estimate must be broken down into items sufficient in detail to meet the stated requirements. Check boxes if these requirements are met.

If the project is funded with more than one type of federal-aid it must be segregated by fund types (see Chapter 3, *Project Authorization*, of the LAPMI). Check box if this requirement is met.

**XVI. LOCAL AGENCY SIGNATURE**

The Federal Contract Provisions Checklist shall be signed by the person preparing the contract specifications. The checklist shall be signed even if prepared by the same person who will sign the PS&E Certification.

**XVII. CALTRANS ACCEPTANCE**

Caltrans will indicate the appropriate acceptance statement based on the type of review, as described in Chapter 12, *Plans, Specifications & Estimate*, of the LAPM, and sign the bottom of the form.

## SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

**GENERAL.**—The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section 14. Whenever in said required contract provisions references are made to "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA," such references shall be construed to mean "Engineer" as defined in Section 1-1.18 of the Standard Specifications.

**PERFORMANCE OF PREVIOUS CONTRACT.**—In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

**NON-COLLUSION PROVISION.**—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.**—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated in part or in its entirety within other sections of these special provisions.

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture \_\_\_\_\_

2. Address of joint venture \_\_\_\_\_

3. Phone number of joint venture \_\_\_\_\_

4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.) \_\_\_\_\_

a. Describe the role of the DBE firm in the joint venture. \_\_\_\_\_

b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: \_\_\_\_\_

5. Nature of the joint venture's business \_\_\_\_\_

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of DBE ownership? \_\_\_\_\_

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.).

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- a. Profit and loss sharing.
- b. Capital contributions, including equipment.
- c. Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

a. Financial decisions \_\_\_\_\_

b. Management decisions, such as:

1. Estimating \_\_\_\_\_

2. Marketing and sales \_\_\_\_\_

3. Hiring and firing of management personnel \_\_\_\_\_

4. Purchasing of major items or supplies \_\_\_\_\_

c. Supervision of field operations \_\_\_\_\_

Note.—If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

#### **Affidavit**

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

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.....	.....
Name of Firm	Name of Firm
.....	.....
Signature	Signature
.....	.....
Name	Name
.....	.....
Title	Title
.....	.....
Date	Date

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared (Name) \_\_\_\_\_ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]



**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

(Exclusive of Appalachian Contracts)

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**ATTACHMENTS**

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

**6. Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

*"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."*

**2. EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively

administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such

records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

#### **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

##### **1. General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3)] issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

##### **2. Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

##### **3. Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit

as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

**a. Apprentices:**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

**b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**1. Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

**2. Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available

may be grounds for debarment action pursuant to 29 CFR 5.12.

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

### **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding re-

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garding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

*"Whoever being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

### **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized



for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

## **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

### **1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

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d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the el-

igibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment,  
Suspension, Ineligibility and Voluntary  
Exclusion-Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XII. CERTIFICATION REGARDING USE OF  
CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract,

grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall

be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## FEDERAL-AID FEMALE AND MINORITY GOALS

In accordance with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-aid Construction Contracts" the following are the goals for female utilization:

Goal for Women  
 (applies nationwide).....(percent) ..... 6.9

The following are goals for minority utilization:

### CALIFORNIA ECONOMIC AREA

	Goal (Percent)
174 Redding, CA:	
Non-SMSA Counties .....	6.8
CA Lassen; CA Modoc;	
CA Plumas; CA Shasta;	
CA Siskiyou; CA Tehama.	
175 Eureka, CA:	
Non-SMSA Counties .....	6.6
CA Del Norte; CA Humboldt;	
CA Trinity.	
176 San Francisco-Oakland-San Jose, CA:	
SMSA Counties:	
7120 Salinas-Seaside-	
Monterey, CA.....	28.9
CA Monterey.	
7360 San Francisco-Oakland, CA.....	25.6
CA Alameda; CA Contra Costa;	
CA Marin; CA San Francisco;	
CA San Mateo.	
7400 San Jose, CA.....	19.6
CA Santa Clara.	
7485 Santa Cruz, CA.....	14.9
CA Santa Cruz.	
7500 Santa Rosa, CA.....	9.1
CA Sonoma.	
8720 Vallejo-Fairfield- Napa, CA .....	17.1
CA Napa; CA Solano	
Non-SMSA Counties.....	23.2
CA Lake; CA Mendocino;	
CA San Benito.	

177 Sacramento, CA:	
SMSA Counties:	
6920 Sacramento, CA.....	16.1
CA Placer; CA Sacramento;	
CA Yolo.	
Non-SMSA Counties.....	14.3
CA Butte; CA Colusa;	
CA El Dorado; CA Glenn;	
CA Nevada; CA Sierra;	
CA Sutter; CA Yuba.	
178 Stockton-Modesto, CA:	
SMSA Counties:	
5170 Modesto, CA .....	12.3
CA Stanislaus.	
8120 Stockton, CA .....	24.3
CA San Joaquin.	
Non-SMSA Counties.....	19.8
CA Alpine; CA Amador;	
CA Calaveras; CA Mariposa;	
CA Merced; CA Tuolumne.	
179 Fresno-Bakersfield, CA:	
SMSA Counties:	
0680 Bakersfield, CA.....	19.1
CA Kern.	
2840 Fresno, CA.....	26.1
CA Fresno.	
Non-SMSA Counties.....	23.6
CA Kings; CA Madera;	
CA Tulare.	
180 Los Angeles, CA:	
SMSA Counties:	
0360 Anaheim-Santa Ana-Garden	
Grove, CA.....	11.9
CA Orange.	
4480 Los Angeles-Long	
Beach, CA .....	28.3
CA Los Angeles.	
6000 Oxnard-Simi Valley-	
Ventura, CA .....	21.5
CA Ventura.	

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6780 Riverside-San Bernardino- Ontario, CA .....	19.0
CA Riverside; CA San Bernardino.	
7480 Santa Barbara-Santa Maria- Lompoc, CA .....	19.7
CA Santa Barbara.	
Non-SMSA Counties .....	24.6
CA Inyo; CA Mono; CA San Luis Obispo.	
181 San Diego, CA:	
SMSA Counties	
7320 San Diego, CA .....	16.9
CA San Diego.	
Non-SMSA Counties .....	18.2
CA Imperial.	

In addition to the reporting requirements set forth elsewhere in this contract the Contractor and subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form FHWA PR-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

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*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL  
SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE  
CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)*

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder\_\_\_\_\_, proposed subcontractor \_\_\_\_\_, hereby certifies that he has\_\_\_\_\_, has not\_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts, which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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**Noncollusion Affidavit**  
(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY / COUNTY of \_\_\_\_\_  
*DEPARTMENT OF PUBLIC WORKS.*

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.  
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

\_\_\_\_\_

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## DEBARMENT AND SUSPENSION CERTIFICATION

### TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

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## NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

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**DISCLOSURE OF LOBBYING ACTIVITIES**

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____		<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____
<b>6. Federal Department/Agency:</b>  _____	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b>  _____	<b>9. Award Amount, if known:</b>  _____	
<b>10. a. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI)  _____		<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI)  _____
(attach Continuation Sheet(s) if necessary)		
<b>11. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b>  _____  (attach Continuation Sheet(s) if necessary)		
<b>15. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Authorized for Local Reproduction Standard Form - LLL		

**Federal Use Only:**

Standard Form LLL Rev. 09-12-97

**INSTRUCTIONS FOR COMPLETION OF SF-LLL,  
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered federal action.  
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90«ENDIF»

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## SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

### 2-1.01 GENERAL

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of the proposal form and the submission of the bid.

In addition to the subcontractors required to be listed in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the portion of work that will be done by each subcontractor listed. A sheet for listing the subcontractors is included in the Proposal.

The form of Bidder's Bond mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Proposal. Signing the Proposal shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

**2-1.015--FEDERAL LOBBYING RESTRICTIONS.**--Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier subrecipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal-aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than federal funds have been paid for the same purposes in connection with this federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for federal-aid contracts regarding payment of funds to lobby Congress or a federal agency is included in the Proposal. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Proposal. Signing the Proposal shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal Action.

**2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE).**-- This contract is subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The Regulations in their entirety are incorporated herein by this reference. Disadvantaged business enterprises (DBEs), as defined in 49 CFR part 26 are encouraged to participate in the performance of contracts financed in whole or in part with Federal Funds. The Contractor should ensure that DBEs have the opportunity to participate in the performance of this contract and shall take all necessary and reasonable steps for this assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Bidders shall be fully informed with respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;
- B. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company;
- C. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest;
- D. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
- E. DBEs must be certified by California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
  - 1. The Caltran's "Civil Rights" web site at:  
<http://www.dot.ca.gov/hq/bep>.
  - 2. The Caltran's DBE Directory. This Directory may be obtained from the Department of Transportation, Materiel Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520;
- F. When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:
  - 1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  - 2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph F.2., if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad

- hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph F.2.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  4. The DBE may lease trucks from another DBE firm including an owner-operator, who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  5. The DBE may also lease trucks from a non-DBE firm including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
  6. For the purposes of this paragraph G, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- H. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### 2-1.03 DBE AVAILABILITY ADVISORY

As required by federal law, Caltrans has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, Caltrans is tracking DBE participation on all Federal-aid contracts administered by cities/counties and other local agencies.

*(Use the following paragraph in Federal-aid projects with a DBE availability advisory percentage. Delete paragraph if project has no DBE availability advisory percentage.*

To assist bidders in ascertaining DBE availability for specific items of work, the Agency advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and their likely availability for work on this project is <insert %> percent. The Agency also advises that participation of DBEs in the specified percentage is not a condition of award..

*(Use the following paragraph in Federal-aid projects without a DBE availability advisory percentage. Delete paragraph if project has a DBE availability advisory percentage.*

The Agency has not established a DBE Availability Advisory for this project. Bidders who obtain DBE participation on this project will assist the state in meeting its statewide overall DBE goal.

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### SECTION 3. AWARD AND EXECUTION OF CONTRACT

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

A "LOCAL AGENCY BIDDER - DBE INFORMATION" form will be provided by the Agency in the contract documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR Part 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

The successful bidder's "LOCAL AGENCY BIDDER - DBE INFORMATION" form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A successful bidder certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies.

The successful bidder is encouraged to provide written confirmation from each DBE that the DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the successful bidder is encouraged to submit a copy of the joint venture agreement.

The "LOCAL AGENCY'S BIDDER - DBE INFORMATION" form should be completed and returned to the Agency by the successful bidder with the executed contract and contract bonds.

### SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work," in Section 8-1.06, "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.

The Contractor shall begin work within \_\_\_ calendar days after the contract has been approved by the City/County of \_\_\_\_\_.

This work shall be diligently prosecuted to completion before the expiration of \_\_\_\_\_ WORKING DAYS beginning on the \_\_\_ calendar day after approval of the contract.

#### (INSERT AMOUNT OF LIQUIDATED DAMAGES)

The Contractor shall pay to the City/County of \_\_\_\_\_ the sum of \$ \_\_\_\_\_ per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

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**5-1. SUBCONTRACTOR AND DBE RECORDS.** -- The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on "Final Report – Utilization of Disadvantaged Business Enterprises - (DBE), First-Tier Subcontractors" (Exhibit 17-F/Form CEM-2402) and certified correct by the Contractor or his authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

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**5-1. \_\_ PERFORMANCE OF SUBCONTRACTORS**

The subcontractors listed by the Contractor in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources.

The Contractor should notify the Engineer in writing of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

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**5-1. SUBCONTRACTING**

Attention is directed to the provisions in Section 8-1.01, "Subcontracting," and these special provisions. Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at:

<http://www.dir.ca.gov/DLSE/Debar.html>.

The provisions in the third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications, that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original contract price, (*is or is not*) changed by the Federal Aid requirement specified under "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions that the Contractor perform not less than 30 percent of the original contract work with the Contractor's own organization.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

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**5-1. BUY AMERICA REQUIREMENTS.** -- Attention is directed to the “Buy America” requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In accordance with said law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of such steel or iron materials shall be considered a manufacturing process subject to the “Buy America” requirements.

A Certificate of Compliance, conforming to the provisions in Section 6-1.07, “Certificates of Compliance,” of the Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall also specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions allowed herein.

The requirements imposed by said law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater. The Contractor shall furnish the Engineer acceptable documentation of the quantity and value of any foreign steel and iron prior to incorporating such materials into the work.

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(To be used, when applicable, in Federal-aid projects)  
\*Insert number of trainees.

## FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS

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### FEDERAL REQUIREMENT TRAINING

**SPECIAL PROVISION.** -- As part of the Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

The Contractor shall provide on-the-job training to develop full journeymen in the types of trades or job classification involved.

The goal for the number of trainees or apprentices to be trained under the requirements of this special provision will be \_\_\_\_\_.

In the event the Contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees or apprentices are to be trained by the subcontractor, provided however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also ensure that this Training Special Provision is made applicable to such subcontract. Where feasible, 25 percent of trainees or apprentices in each occupation shall be in their first year of apprenticeship or training.

The number of trainees or apprentices shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing work, the Contractor shall submit to the Department for approval the number of trainees or apprentices to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee or apprentice employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees or apprentices as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority and women trainees or apprentices (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees or apprentices) to the extent such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee or apprentice in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by both the Department and the Federal Highway Administration. The Department and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee or apprentice for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with the State of California, Department of Industrial Relations, Division of Apprenticeship Standards recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office.

Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training of persons in excess of the number specified herein.

This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Contractor where he does one or more of the following and the trainees or apprentices are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or apprentice or pays the trainee's or apprentice's wages during the offsite training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee or apprentice as a journeyman, is caused by the

Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee or apprentice will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he

has completed his training program. It is not required that all trainees or apprentices be on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees or apprentices specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Only trainees or apprentices registered in a program approved by the State of California's State Administrator of Apprenticeship may be employed on the project and said trainees or apprentices shall be paid the standard wage specified under the regulations of the craft or trade at which they are employed.

The Contractor shall furnish the trainee or apprentice a copy of the program he will follow in providing the training. The Contractor shall provide each trainee or apprentice with a certification showing the type and length of training satisfactorily completed.

The Contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision

**FR-16**

U.S DEPARTMENT OF TRANSPORTATION	FEDERAL HIGHWAY ADMINISTRATION	CALIFORNIA DEPARTMENT OF TRANSPORTATION
<b>REQUEST FOR APPROVAL OF COST-EFFECTIVENESS/PUBLIC INTEREST FINDING</b>		
<b><u>COST-EFFECTIVENESS DETERMINATION REQUIRED</u></b>		<b><u>PUBLIC INTEREST DETERMINATION REQUIRED</u></b>
<input type="checkbox"/> Experimental Contracting methods (23 CFR 635.204) <input type="checkbox"/> Informal Bid (Less than three week advertisement) (23 CFR 635.112)* <input type="checkbox"/> Use of force account (day labor) (23 CFR 635.201) <input type="checkbox"/> Use of publicly owned equipment (23 CFR 635.106) <input type="checkbox"/> Other: _____  * NHS Projects Only		<input type="checkbox"/> Use of State-furnished materials (23 CFR 635.407)* <input type="checkbox"/> Mandatory use of borrow/disposal sites (23 CFR 635.407)* <input type="checkbox"/> Use of patented and proprietary materials (23 CFR 635.411)* <input type="checkbox"/> Waiver of Buy America Requirements (23 CFR 635.410) <input type="checkbox"/> Other: _____  * NHS Projects Only
FEDERAL-AID PROJECT	CLASS OF FEDERAL FUNDS: <input type="checkbox"/> IM <input type="checkbox"/> NH <input type="checkbox"/> STP <input type="checkbox"/> OTHER:	
	STEWARDSHIP: <input type="checkbox"/> STATE AUTHORIZED <input type="checkbox"/> FULL OVERSIGHT	
EA	DIST-CO-RTE- PM	ESTIMATED COST
GENERAL LOCATION		GENERAL DESCRIPTION OF WORK:
REASONS THAT REQUESTED APPROVAL IS CONSIDERED TO BE COST-EFFECTIVE OR IN THE PUBLIC'S BEST INTEREST (STATE):		
REMARKS (STATE) :		
APPROVED BY LOCAL AGENCY'S REPRESENTATIVE (State Author. Projects)		DATE:
		REPRESENTATIVE NAME AND TITLE:

Distribution: Local Agency File (Original), DLAE (Copy), Caltrans Project Manager (Copy if on the SHS)

## INSTRUCTIONS

1. Check appropriate box under “Cost-Effective Determination Required” or “Public Interest Determination Required.” Items noted with an ( \* ) **asterisk** apply only to projects on the National Highway System (NHS) and no “Finding” is required for projects off the NHS.
2. Check “Class of Funds” as follows: IM-Interstate Maintenance, NH-National Highway, STP-State Transportation Program, Other (all other classes).
3. Provide the Federal-aid Project EA number in first column.
4. Identify Caltrans District-County-State Route-Post Mile, or City and street in second column.
5. List Estimated Cost of the portion of the project subject to this “Finding”.
6. List the amount of the Federal Funds in the portion of the project subject to this “Finding.”
7. Describe “General Location” applicable to this “Finding.”
8. Provide “General Description of Work” affected by this “Finding.”
9. Explain and give “Reasons that requested approval is considered to be cost-effective, or in the public’s best interest.” Provide cost analysis or comparison as evidence of cost-effectiveness.
10. “Remarks” is for the Local Agency Representative approving the Finding.
11. Signature, Name, and Title of Local Agency Representative approving “Finding.”
12. Date of Local Agency Representative’s signature.

## NOTES:

- a. Local agency “State Authorized” Projects **off** the State Highway System (SHS) or NHS requires the signature of the City or County Public Works Director.
- b. Local agency “State Authorized” Projects on the State Highway System, or NHS also requires Caltrans approval.
- c. Local agency “State Authorized” Projects on the Interstate requires both Caltrans and FHWA approval.
- d. One exception to the foregoing is the local agency “Waiver of Buy America Requirements” which requires both Caltrans and FHWA approval, **off** and **on** the State Highway System, or NHS.
- e. Questions, the local agency should check with the DLAE for projects **off** the SHS, and the Caltrans Project Manager for projects on the SHS or Interstate.

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